

State of South Dakota

South Dakota Real Estate License Laws & Administrative Rules



**South Dakota Real Estate Commission
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www.state.sd.us/sdrec**

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SDCL 36-21A, SDCL 43-15A, SDCL 43-15B,
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36-21A-1. Definition of terms. Terms used in this chapter mean:

- (1) "Agency," any relationship by which one person acts for or on behalf of a client subject to the client's reasonable direction and control;
- (2) "Agency agreement," a written agreement between a broker and a client which creates a fiduciary relationship between the broker and client. The payment or promise of payment of compensation to a responsible broker does not determine whether an agency relationship has been created between any responsible broker or licensees associated with the responsible broker and a client;
- (3) "Auction," any public sale of real estate as defined in § 36-21A-11 or business property as defined in subdivision 36-21A-6 (3) at public outcry to the highest bidder;
- (4) "Auctioneer," any person licensed under this chapter who auctions, offers, attempts or agrees to auction real estate or business opportunities;
- (5) "Broker associate," any broker acting in association with or under the auspices of a responsible broker;
- (6) "Client," any person, including a seller/landlord or a buyer/tenant, who has entered into an agency relationship with a real estate licensee;
- (7) "Commission," the South Dakota Real Estate Commission;
- (8) "Consumer," any person seeking or receiving services from a real estate broker;

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- (9) "Customer," any party to a real estate transaction who does not have an agency relationship with a licensee;
- (10) "Designated broker," any broker licensee designated by a responsible broker to act for the company in the conduct of real estate brokerage;
- (11) "In-company transaction," any transaction in which both the seller/landlord and the buyer/tenant receive real estate services from the same broker or from licensees associated with the same broker;
- (12) "Licensee," any person holding a license issued pursuant to this chapter;
- (13) "Limited agent," any licensee who has a written agency relationship with both the seller and the buyer in the same in-company transaction;
- (14) "Person," any individual, corporation, limited liability company, partnership, limited partnership, association, joint venture or any other entity, foreign or domestic;
- (15) "Purchaser," any person who acquires or attempts to acquire or succeeds to an interest in real property;
- (16) "Responsible broker," any person holding a broker's license issued pursuant to this chapter who is responsible for the real estate activities conducted by those licensees acting in association with or under the auspices of the responsible broker;
- (17) "Served actively," if referring to a real estate salesman, having the license on an active status with the commission;
- (18) "Single agent," any licensee who represents only one party to a transaction;
- (19) "Substantial interest," and "substantial amount," in the case of a corporation, limited liability company, partnership or association, is at least as large an interest in the corporation, limited liability company partnership or association as that of any other shareholder, partner or principal.
- (20) "Transaction broker," a broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to the transaction. The term includes the licensees associated with the broker;
- (21) "Transaction broker agreement," a written agreement in which the broker does not represent either the seller or the buyer in a fiduciary capacity. No brokerage relationship can be created or implied by word or action alone, but only by written agreement clarifying the brokerage relationship.

36-21A-2. "Advertising" defined. For the purposes of this chapter, an advertisement is any attempt, by publication or broadcast, whether oral, written or otherwise, to induce a person to use the services of a licensed real estate broker, real estate salesman or real estate firm.

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36-21A-3. "Appraisal" defined. For the purposes of this chapter, an appraisal is the work product of a real estate appraiser which estimates the value of real estate or any interest in real estate.

36-21A-4. "Appraiser" defined. For the purposes of this chapter, an appraiser is any person engaged in the business of estimating real estate values or who advertises or holds himself out to the general public to provide such a service for compensation.

36-21A-5. "Association" defined. For the purposes of this chapter, an association is any body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise. It is an unincorporated society and not a partnership. It is a body of persons invested with some, yet not full, corporate rights and powers.

36-21A-6. "Real estate broker" and "broker" defined. For the purposes of this chapter, a broker or a real estate broker is any person who does any of the following:

- (1) For another and for compensation or consideration or with the intention or expectation of receiving compensation or consideration, directly or indirectly, lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase, lease or rental of an interest in real property, or a mobile or manufactured home which has been registered under the provisions of chapters 32-3 to 32-5B, inclusive, unless licensed under chapter 32-7A to sell used mobile or manufactured homes, or advertises or holds himself out as engaged in such activities;
- (2) For another and for compensation or consideration or with the intention or expectation of receiving compensation or consideration, directly or indirectly, negotiates or offers or attempts to negotiate a loan, secured or to be secured by a mortgage or other encumbrance on real property;
- (3) For another and for compensation or consideration or with the intention or expectation of receiving compensation or consideration, directly or indirectly, lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase, lease or rental of any business opportunity or business, or its goodwill, inventory or fixtures, or any interest therein;
- (4) For another and for compensation or consideration or with the intention or expectation of receiving compensation or consideration, directly or indirectly, offers, sells or attempts to negotiate the sale of property that is subject to the registration requirements concerning subdivided land;
- (5) Charges a fee for undertaking to promote the sale or lease of real property by means of listing in a publication primarily for such purpose;
- (6) Engages wholly or in part in the business of selling real property to the extent that a pattern of selling real property is established, whether or not the real property is owned by the person;

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- (7) Is employed by or on behalf of any owner of lots or other parcels of real property for compensation or consideration to sell the real property or any part thereof;
- (8) Appraises, offers, attempts or agrees to appraise real property unless licensed or certified to appraise under some other provision of South Dakota law;
- (9) Auctions, offers, attempts or agrees to auction real estate unless licensed to auction real property under some other provision of South Dakota law; or
- (10) Buys or offers to buy or sell or otherwise deals in options to buy real property.

36-21A-7. "Moral turpitude" defined. For the purposes of this chapter, moral turpitude is any act done contrary to honesty and good morals. It is also an act of baseness, vileness or depravity in the private and social duties which man owes to his fellowman or to society in general.

36-21A-8. "Mortgage broker" defined. Repealed by SL 1997, ch 275, § 3.

36-21A-9. "Inactive licensee" defined. For the purposes of this chapter, an inactive licensee is any licensee whose license has been returned to the commission by the licensee's responsible broker, a licensee who has returned his license to the commission and requested the commission to place the license on inactive status, or a new licensee who has failed to designate a responsible broker.

36-21A-10. "Property manager" defined. For the purposes of this chapter, a property manager is any person who for a fee, commission or other valuable consideration or with the intent or expectation of receiving a fee, commission or consideration negotiates or attempts to negotiate the rental, exchange or leasing or any real estate or of the improvements on it; lists real estate exchanges, rentals or leases; collects rents or attempts to collect rents for real estate; or advertises or holds himself out as engaged in any of the foregoing activities.

The term also includes any person who engages in the business of charging a fee or contracting for the collection of a fee in connection with a contract under which he undertakes to prompt the renting or leasing of real estate through its listing in a publication issued primarily for this purpose or through referral of information concerning the rentals or leases.

36-21A-11. "Real estate" and "realty" defined. For the purposes of this chapter, real estate or realty is any interest or estate in real property or the property's improvements or fixtures whether corporeal, incorporeal, freehold or nonfreehold, and whether the real property is situated in this state or elsewhere, and includes leaseholds, condominiums, air rights and mineral rights.

36-21A-12. "Real estate salesperson" defined. For the purposes of this chapter, a real estate salesperson is any person who for compensation or consideration is associated with a real estate broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale, lease, rental, or exchange of real property, or of the property's improvements, or any business opportunity or business, or its goodwill, inventory, or fixtures, or any interest therein, or to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale, lease, rental, or exchange of a mobile or manufactured home which has been registered under the provisions of chapters 32-3 to 32-5B, inclusive. A salesperson may give opinions of value for purposes of purchase, sale, lease, rental, or exchange of real property.

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36-21A-12.1. "Residential rental agent" defined -- Promulgation of rules for licensing requirements. For the purposes of this chapter, a residential rental agent is any person who for compensation or consideration is associated with a real estate broker or property manager to negotiate or attempt to negotiate the rental or leasing of residential property, or collect rents or attempt to collect rents. The Real Estate Commission may promulgate rules pursuant to chapter 1-26 to establish requirements for licensing a residential rental agent.

36-21A-13. Real estate commission created -- Composition. There is created a South Dakota Real Estate Commission. The commission consists of five members appointed by the Governor. The members may not all be of the same political party. Three members shall be active real estate brokers; two shall be members of the public.

36-21A-14. Terms of commission members -- Vacancies. Each member of the commission shall be appointed for a term of three years. Any member appointed to the commission prior to July 1, 2005, shall serve the four-year term to which the member was originally appointed. Any member appointed to the commission after July 1, 2005, shall serve a three-year term. No member may serve more than three consecutive full terms. Any member appointed to fill a vacancy arising during a commissioner's term shall serve for the unexpired portion of the term. The appointment to an unexpired term is not considered a full term.

36-21A-15. Quorum of commission. A majority of the commission, in meetings duly assembled, may perform and exercise all of the duties and powers of the commission. Actions of the commission shall be taken upon a majority vote of those members present.

36-21A-16. Commission continued within Department of Revenue and Regulation -- Records and reports. The commission shall be an adjunct of the Department of Revenue and Regulation, and shall retain all its prescribed functions, including administrative functions. The commission shall submit such records, information and reports in the form and at such times as required by the secretary of revenue and regulation. However, the commission shall report at least annually.

36-21A-17. Seal of commission. The commission shall adopt a seal with South Dakota Real Estate Commission engraved thereon, by which it shall authenticate its proceedings.

36-21A-18. Employment of executive director -- Bonds -- Duties. The commission shall employ an executive director who shall furnish bond as required by the commission and who shall keep a record of all proceedings, transactions, communications and official acts of the commission. The executive director shall be custodian of all moneys received and shall deposit all moneys in depositories designated by the commission. He shall be custodian of all records of the commission and perform such other duties as the commission may require.

36-21A-19. Salary of executive director -- Employment of other personnel -- Expenditures. The commission may fix the salary of the executive director in accordance with chapter 3-6A, employ other employees as may be necessary to carry out the provisions of this chapter, fix salaries and prescribe the duties of its employees and make other expenditures necessary to carry out the provisions of this chapter.

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36-21A-20. Office of executive director -- Records and property maintained. The location of the office of the executive director shall be at such places within the state as the commission may designate. The commission shall maintain all of its files, records, and property at the office of the executive director.

36-21A-21. Meetings of commission. The commission shall meet annually and at other times upon call by the executive director, chairman or upon a written request of three or more members of the commission. The place of meeting of the commission shall be at the office of the executive director or other places within South Dakota as designated by the commission.

36-21A-22. Filing or notice to the commission -- Date of filing or notice. Whenever any filing or notice to the commission is provided for, the filing or notice shall be delivered in person or mailed to the commission at its principal place of business. The date of the filing or notice is the date upon which the document is received at the principal place of business of the commission.

36-21A-23. Compensation and expenses of commission members. The compensation and reimbursement of expenses provided by law for members of the commission shall be paid from the funds of the commission.

36-21A-24. Real estate courses and institutes conducted by commission. The commission may conduct, hold or assist in conducting or holding real estate courses or institutes, and incur and pay the necessary expenses in connection therewith, which courses or institutes shall be open to the licensees. The commission may charge a reasonable fee for such courses and institutes.

36-21A-25. Assistance provided to libraries, licensees, institutes and foundations. The commission may assist libraries, licensees, institutes and foundations, with financial aid or otherwise, in providing texts, sponsoring studies, surveys and programs for the benefit of the real estate business and the elevation of the real estate business.

36-21A-26. Publication of list of licensees -- Other information included. The executive director of the commission shall, at least annually, publish a list of the names and addresses of all persons licensed by the commission under the provisions of this chapter, together with such other information relative to the enforcement of the provisions of this chapter as the commission determines to be of interest to the public. The commission may charge a reasonable fee to persons who request the list.

36-21A-27. Person acting as broker deemed to be broker within meaning of this chapter. A person, unless exempted under this chapter, who, directly or indirectly, for another, with the intention or upon the promise of receiving compensation or consideration, offers, attempts or agrees to perform or performs any single act that may be performed by a broker as described in § 36-21A-6, whether as a part of a transaction or as an entire transaction, is deemed a broker or salesman within the meaning of this chapter. No person licensed under this chapter comes within the exceptions set forth in this chapter including any transaction in which he has a personal interest.

36-21A-28. Acting as a licensee without license as a misdemeanor. No person may act as a licensee under this chapter, assume to act as a licensee or advertise as a licensee without a license issued by the commission. No person may collect compensation as a licensee under this chapter

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without having first complied with the provisions of this chapter. A violation of this section is a Class 1 misdemeanor.

36-21A-29. Persons and entities exempted from this chapter. This chapter does not apply to the following:

- (1) Any person who as a bona fide owner or lessor, performs any of the acts described in § § 36-21A-6 and 36-21A-12 with reference to property owned, or leased by the person, or to any regular employees thereof, if such acts are performed in the regular course of, or as an incident to the management of such property or investment in such property;
- (2) Any public officer while performing the officer's duties;
- (3) Any person owning and operating a cemetery and selling lots solely for use as burial plots;
- (4) Any person acting as a receiver, trustee, administrator, executor, guardian or under court order, or while acting under authority of a deed, trust, or will;
- (5) Any custodian, janitor, or employee of the owner or manager of a residential building who exhibits a residential unit therein to prospective tenants, accepts applications for leases and furnishes prospective tenants with information relative to the rental of the unit, terms and conditions of leases required by the owner or manager and similar information;
- (6) Any owner, manager, or employee of a business holding a lodging license while engaging in the lodging business;
- (7) Any attorney at law, admitted to practice in South Dakota, unless the attorney holds himself or herself out to be in the real estate business or solicits real estate business, in which event the attorney may obtain a real estate license without examination, but the attorney is otherwise subject to the provisions of this chapter;
- (8) Any bank, bank holding company or subsidiary thereof, trust company, savings and loan association, public utility or any land mortgage or farm loan association organized under the laws of this state or the United States, if engaged in the transaction of business within the scope of its corporate powers as provided by law;
- (9) Any person holding, in good faith, a duly executed power of attorney from the owner, authorizing the final consummation and execution for the sale, purchase, leasing, or exchange of real property if such acts are not of a recurrent nature and done with the intention of evading this chapter; and
- (10) Any employee of any person enumerated in this section whose principal duties are other than those duties described in § § 36-21A-6 and 36-21A-12, if engaged in the specific performance of the employee's duties.

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36-21A-30. Reputation, age, competence, and citizenship required for license -- Prior rejection or revocation of license. A license shall be granted only to persons of reputable character who have attained the age of eighteen years; who are competent to transact the business of a licensee in a manner as to safeguard the interest of the public; and whose application for a license has not been rejected, except for the reason that the applicant failed any examination required by this chapter, in this or any other state within one year prior to the date of application; or whose license has not been revoked in this or any other state within five years prior to date of application. No one except a citizen of the United States of America, or resident of South Dakota, is eligible to secure a license as a broker, except as otherwise provided by this chapter.

36-21A-30.1. Education requirement for broker associate license applicants. An applicant for a broker associate license must have completed one hundred sixteen class hours of education in a course of study approved by the commission given by instructors approved by the commission or in an independent study or distance education course approved by the commission. The commission may adopt rules, pursuant to chapter 1-26, to specify requirements for the course, qualifications of an instructor, and criteria for an independent study or distance education course.

36-21A-30.2. Post-licensing education requirement for broker associates. Any broker associate receiving initial licensure as a broker associate after June 30, 2009, shall complete sixty class hours of education in a course of study approved by the commission given by instructors approved by the commission or in an independent study or distance education course approved by the commission. The broker associate shall complete the sixty class hours in prescribed subject matter by the second renewal deadline with thirty class hours completed during the initial licensing period and thirty class hours completed during the second licensing period. The thirty class hours completed during the initial licensing period and second licensing period apply towards the continuing education requirements for license renewal. The commission shall adopt rules, pursuant to chapter 1-26, to specify requirements for the course, qualifications of an instructor, and criteria for an independent study or distance education course.

36-21A-31. Experience and education required of applicant for responsible broker's license. An applicant for a responsible broker's license shall have served actively for two years as a licensed salesperson or broker associate, or a combination thereof, and shall furnish evidence of completion of fifteen additional class hours beyond the broker associate level in a course approved by the commission given by instructors approved by the commission or in an independent study or distance education course approved by the commission. If the applicant for a responsible broker's license meets all requirements except the fifteen-additional-class-hours requirement, the commission or executive director may approve the applicant for a responsible broker's license if the applicant certifies in writing to furnish the commission with evidence of completion of the fifteen-additional-class-hours requirement within six months of the date of the approval. The commission may adopt rules, pursuant to chapter 1-26, to specify requirements for the course of study. Any person licensed as a broker associate under § 36-21A-34.1 shall, in addition to the education requirements of this section, complete the broker examination requirements to qualify as a responsible broker. Any broker licensed prior to July 1, 1996, is exempt from these requirements.

36-21A-32. Waiver of experience requirement on responsible broker applicant's refusal to associate -- Relocation or acceptance of unfair contract not required. If otherwise qualified, the requirement of two years serving as a salesperson or broker associate may be waived if the applicant for a responsible broker's license certifies that the applicant has been refused association as

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a salesperson or broker associate by at least three licensed responsible brokers within sixty days before the application. The responsible brokers named in the application as having refused to associate shall be contacted by the commission to determine whether the attempt by the salesperson or broker associate to associate was in good faith. If the commission determines that there were not three good faith applications to associate by the salesperson or broker associate with a responsible broker or that the applicant has refused association with a responsible broker, the two-year period may not be waived. No applicant may be forced to relocate in order to associate with a responsible broker. If the applicant's reason for refusing to associate are the terms of the contract with the responsible broker, the applicant's refusal to associate with the responsible broker does not count as a refusal if the commission decides the contract is unfair to the salesperson or broker associate.

36-21A-33. Denial of application. An application may be denied for any one of the following reasons:

- (1) The applicant has written insufficient funds checks within the calendar year before application or has written an insufficient funds check for his application;
- (2) The applicant has been convicted of a felony or of a misdemeanor involving moral turpitude. If the applicant is a firm, a license may be denied if any partner, associate, director, stockholder, officer or qualifying broker has been convicted of a felony or of a misdemeanor involving moral turpitude;
- (3) The applicant has been disciplined by a regulatory agency in relation to his activities as a real estate salesman or broker, appraiser, mortgage broker, auctioneer or any other regulated licensee, including insurance, securities, law and commodities trading;
- (4) The applicant has failed to satisfy the requirements as provided by this chapter;
- (5) The applicant has failed the prelicense school examination;
- (6) The applicant has not met education requirements;
- (7) The applicant made deliberate misstatements, deliberate omissions, misrepresentations or untruths in his application; or
- (8) The applicant has a current and unpaid judgment filed against him.

36-21A-34. Education required for salesperson's license. Repealed by SL 2002, ch 180, § 5.

36-21A-34.1. Continuing education required of salesperson -- Promulgation of rules specifying requirements -- Exemption. Any person licensed as a real estate salesperson pursuant to this chapter shall, within two years of January 1, 2003, complete forty hours of prescribed education in a course approved by the commission. Any real estate salesperson whose license is inactive shall complete the prescribed education and course examination requirements before activating that license. The commission shall promulgate rules, pursuant to chapter 1-26, to specify requirements for the course and examination. This section does not apply to residents of another licensing jurisdiction who are licensed in South Dakota under the provisions of a reciprocal agreement with that jurisdiction.

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36-21A-34.2. Certain salespersons to apply for broker associate license. Any salesperson who has completed the requirements of § 36-21A-34.1 shall file an application for a broker associate license before the end of the current license term.

36-21A-35. Application for license -- Contents -- Oath or affirmation. An application for a license shall be in writing upon forms furnished by the commission and shall contain such data and information as the commission may require and shall be verified on oath or affirmation under penalty of perjury.

36-21A-36. Written examination -- Time and place -- Contents. An applicant for a license shall submit to a written examination to be conducted by the commission at such times and places as it may direct. The commission shall determine the contents of the examination.

36-21A-36.1. Application for license -- Time limit. Upon notification in writing that the person has passed the examination, the person shall file the appropriate application for license with all the required documents to the Real Estate Commission within sixty days of the notice date. If the person fails to file an application and proof of required education within the sixty-day period, the person's registration and all rights deriving from a passing score are canceled.

36-21A-37. License required for real estate firm. No partnership, association, limited liability company, or corporation may perform the services of a real estate broker as described in § 36-21A-6, nor may a licensee associate or work for any partnership, association, limited liability company, or corporation performing any services described in § 36-21A-6, until such time as the partnership, association, limited liability company, or corporation is licensed by the commission.

36-21A-38. Qualifying broker to sign firm's license application-- Termination of qualifying broker's affiliation--Application fee. No license may be granted to a corporation, limited liability company, partnership or association, unless the corporation, limited liability company, partnership or association designates one or more qualifying brokers who own a substantial interest in and represent the corporation, partnership or association. The qualifying broker shall sign the application for the license. Upon the termination of a qualifying broker's affiliation with the firm, the firm shall name one or more new qualifying brokers and notify the commission in writing. The application fee for a firm license shall be set out by rule promulgated by the commission pursuant to chapter 1-26 and may not exceed one hundred dollars.

36-21A-39. Dissolution of real estate firm -- Return of firm license by qualifying broker. Upon dissolution of a corporation, partnership, limited liability company, or association, the qualifying broker shall immediately return the firm license to the commission.

36-21A-40. Partner or associate must be licensee -- Non licensee as shareholder, director or officer -- Conditions. A person who is not a licensee may not be a partner or an associate in a real estate firm. However, a person who is not licensed may be a shareholder, director or officer in a real estate corporation or firm under the following conditions:

- (1) He does not own a substantial amount of the shares of the stock of the corporation;
- (2) He is within the immediate family of the qualifying broker;

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- (3) He is necessary for the operation of the corporation; and
- (4) The commission has granted an exemption to allow him to be a stockholder, officer or director of the corporation.

An application for a firm license may be issued without further qualification or examination.

36-21A-41. Qualification by examination required. No person may be licensed until qualified by examination, except as otherwise provided by this chapter.

36-21A-42. Retaking portions of examination -- Failing twice. Repealed by SL 2001, ch 208, § 1.

36-21A-43. Examination reciprocity with other states. An applicant currently licensed in another state who has successfully passed the real estate licensing examination given in another state need only take the state portion of the examination in South Dakota.

36-21A-44. Issuance of license to successful applicant -- Association with broker -- Authority to conduct business. Upon passing the examination and completion of the other requirements, a license shall be issued to the successful applicant. Upon receiving the license and associating with a broker, he may conduct the business authorized by the license.

36-21A-45. Suspension of license on disassociation from broker or firm. A real estate salesperson's or broker associate's license is inactive if the real estate salesperson or broker associate ceases to be associated with a real estate broker or a licensed firm.

36-21A-46. Restriction on substantial ownership of business or firm by licensed salesperson or broker associate -- Effective date. No licensed salesperson or broker associate may own a substantial interest in a real estate brokerage business or firm. This section does not apply to an interest acquired before July 1, 1992.

36-21A-46.1. Broker, salesperson or broker associate permitted to form certain business entities -- Conditions. A broker may, or a real estate salesperson or broker associate employed by or otherwise associated with a broker may, form a business corporation or limited liability company under the following conditions:

- (1) The business corporation or limited liability company does not engage in real estate transactions as a third-party agent or in any other capacity requiring a license under this chapter;
- (2) The business corporation or limited liability company does not advertise or otherwise hold itself out as a real estate brokerage company;
- (3) The employing or associating broker is not relieved of any obligation to supervise the employed or associated licensee or any other requirement of this chapter or the rules adopted pursuant to this chapter;

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- (4) The employed or associated licensee is not relieved of any personal liability for any licensed activities by interposing the corporate or limited liability form;
- (5) The business corporation or limited liability company is owned solely by a broker, an individual real estate salesperson, or broker associate, or by that licensee and that licensee's spouse, or by that licensee and other licensees within the same firm as that licensee; and
- (6) The business corporation or limited liability company is approved by and registered with the commission. The registration fee for an approved business corporation or limited liability company shall be established by rule promulgated pursuant to chapter 1-26. The fee may not exceed one hundred dollars.

36-21A-47. Restricted broker's license -- Termination and prosecution if licensee exceeds authority. The commission may promulgate rules pursuant to chapter 1-26 to provide for the issuance of a restricted broker's license to auctioneers, property managers, mortgage brokers or such other categories as the commission determines. The licensee may perform only those duties specified by the license. If the licensee exceeds the authority granted, his license may be terminated and criminal proceedings brought against him.

36-21A-48. Exemption from property manager's license for operators of state and federal housing units. A person who has contracted with the South Dakota Housing Development Authority or the United States to operate housing units or has contracted with the United States in a subsidy program on behalf of the tenants is exempt from obtaining a property manager's license to manage those properties.

36-21A-49. Application fee for real estate salesperson's, broker associate's, broker's, or restricted license. The commission shall set, by rule promulgated pursuant to chapter 1-26, an application fee not to exceed four hundred dollars. This fee shall accompany an application for a real estate salesperson's, broker associate's, or broker's license including restricted licenses.

36-21A-50. Conditions for issuing of license or reinstatement after revocation or suspension. The commission may require a person whose license was revoked or suspended to meet and perform certain conditions before issuing or reinstating a license to that person. Such conditions may include the following:

- (1) Restitution of moneys;
- (2) Restitution of property;
- (3) Periodic reports to the commission;
- (4) Fines, costs, and monetary penalties.

36-21A-51. Broker's place of business -- Licenses displayed -- Property manager license exception. Every person licensed as a real estate broker shall have and maintain a fixed place of business within this state for the transaction of the real estate business. The license of broker and the license of each licensee associated with the broker shall be prominently displayed in the office. This section does not apply to the holder of a property manager license if provisions are made with the commission for auditing the licensee's records.

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36-21A-52. Registration of place of business -- Business restricted to designated place -- New license or inactive status on change of location. The licensee shall register his place of business with the commission, and no licensee may transact business at any other address. In case of removal from the registered address, the licensee shall apply, on forms furnished by the commission, to the commission, before the removal or within ten days after removal. The licensee shall designate the new location of the office or request inactive status, whereupon the commission shall immediately register the new location for the unexpired period, if the new location is satisfactory, or place the licensee on inactive status.

36-21A-53. Branch office name. A branch office shall operate under the same name as the parent office.

36-21A-54. Reciprocal privileges extended to nonresident licensees -- Licensees from states not granting full reciprocity. No nonresident licensee regularly engaged in the real estate business as a vocation, who maintains a definite place of business and is licensed by a state which offers the same privileges to licensees of this state, may be required to maintain a place of business within this state. The commission shall recognize the license issued by another state as qualification for a license in South Dakota. A licensee from a state that does not grant full reciprocity to licensees from South Dakota shall, in order to be licensed in South Dakota, meet the same requirements that the licensees' state requires of South Dakota licensees. The commission may adopt rules pursuant to chapter 1-26 to implement this section.

36-21A-55. Transaction of business subjects nonresidents to personal jurisdiction -- Service of process -- Delivery of copy of process or pleading to executive director. The holding of a license issued under the provisions of this chapter or participating in a transaction for which a license is required by this chapter is the transaction of business within the state, and a nonresident licensee or unlicensed person so defined is subject to the personal jurisdiction of the courts of this state as provided by § 15-7-2.

Service of process shall be made upon corporate licensees as provided by §§ 47-2-32 to 47-2-35, inclusive, and 47-8-15 to 47-8-18, inclusive, and otherwise as provided by chapter 15-6.

Any person licensed under this chapter shall deliver a copy of any process or pleading to which that licensee is a party to the executive director of the commission within ten days of its being served by or upon him. Failure to file with the executive director is not jurisdictional in any action to which a licensee under this chapter may be a party.

36-21A-56. Written notice of change of association -- Statement of registration -- Salesman placed on inactive status. A licensee shall give written notice to the commission of a change of association and of the name of the licensed broker or firm with whom he is about to associate. The broker or firm with whom the licensee was associated and the broker and firm with whom the licensee is about to be associated shall also give written notice to the commission. The commission shall issue a statement of registration to the licensee. The commission shall place a salesman on inactive status until he is registered as being associated with another broker or firm.

36-21A-57. Cancellation of salesperson's or broker associate's license upon unreported change of association. The change of association by an active real estate salesperson or broker associate without notice to the commission may cause cancellation of the license by the commission.

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36-21A-58. Renewal of license by salesperson or broker associate without employing broker -- Restrictions on inactive salesperson or broker associate whose license has been renewed. A salesperson or broker associate who is without an employing broker may renew the license by submitting the renewal fee, together with the completed renewal application on which the licensee has noted inactive status. An inactive salesperson or broker associate whose license has been renewed may not engage in the real estate business until the licensee secures a new employing broker.

36-21A-59. Disassociated salesperson or broker associate performing acts contemplated by this chapter as misdemeanor. No real estate salesperson or broker associate may perform any of the acts contemplated by this chapter, either directly or indirectly after the licensee's association has been terminated and before becoming associated with another broker and has been notified of the registration by the commission. A violation of this section is a Class 1 misdemeanor.

36-21A-60. Additional fees. Fees include the following:

- (1) Certificate of licensee, a fee not to exceed fifteen dollars;
- (2) For each additional office or place of business, a biennial fee not to exceed thirty dollars;
- (3) For each change of office or place of business, a fee not to exceed fifteen dollars;
- (4) For each statement of registration of change of association, a fee not to exceed fifteen dollars; and
- (5) For each duplicate license, if the original license is lost or destroyed and affidavit made thereof, a fee not to exceed fifteen dollars.

36-21A-61. Biennial registration--Fee--Cancellation upon failure to register--Reinstatement. A person or firm licensed either actively or inactive under this chapter shall register every two years with the commission and pay a fee set by rule promulgated by the commission pursuant to chapter 1-26 not to exceed two hundred dollars. The application for renewal of a license shall be made to the commission by November thirtieth of the year the current license expires. Failure of a person to register results in cancellation of the license on December thirty-first. The license may be reinstated by filing a new application and requalifying as provided by this chapter.

36-21A-62. Biennial proof by licensees of continuing education -- Persons exempt. A person licensed under this chapter shall provide to the Real Estate Commission proof of participation in not less than twenty-four hours of approved continuing education in the preceding two-year period. This section does not apply to attorneys licensed in South Dakota, persons licensed to sell time-share estates as defined by chapter 43-15B, or mortgage brokers.

36-21A-63. Approved courses for continuing education -- List maintained -- Standards. The commission may accept attendance at approved lectures, seminars or courses as continuing education. The commission shall maintain a current list of approved sessions or courses of instruction. The commission shall, by rule promulgate pursuant to chapter 1-26, set standards and fees for the approval of seminars or courses as continuing education.

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36-21A-64. License renewal withheld until proof of continuing education presented.

The commission shall withhold the license renewal of a person who does not provide proof of continuing education with the registration application until proof of such continuing education has been presented.

36-21A-65. Exceptions to continuing education requirements. The commission may make exception from continuing education requirements for licensees not engaged in public practice, or for reasons of health, military service or other good cause. However, if such licensee returns to public practice, he shall meet such continuing education requirements as the commission may determine.

36-21A-66. Late renewal application and fee. A licensee who fails to file an application and fee for biennial registration may suspend the cancellation of the license by filing a late registration application and a fee in an amount not to exceed twenty dollars for each month or fraction of a month that has passed since November thirtieth. The fee shall be set by the commission by rule promulgated pursuant to chapter 1-26. However, no late application may be accepted by the commission after June thirtieth.

36-21A-67. Licensees entering United States armed forces -- Application for reinstatement -- Timing and requirements -- Waiver of continuing education. Any person licensed under this chapter, entering the United States armed forces and whose registration under § 36-21A-61 lapses during his service, may be reinstated to his license, without examination, upon his separation from the armed forces other than by dishonorable discharge. The application for reinstatement shall be made within six months of the separation and shall be accompanied by a copy of a discharge or papers of separation. Continuing education hours that accrue during the time that a licensee was in the armed forces may be waived. The commission may adopt rules pursuant to chapter 1-26 to provide for certification of eligibility, waiver of continuing education and administration.

36-21A-68. Grounds for revocation of license -- Criminal prosecution -- Setting minimum fees not impaired -- Suspension, reprimand, and monetary penalties. A license issued under this chapter may be revoked by the commission upon proof of unprofessional conduct on the part of the licensee. For the purposes of this chapter, the term unprofessional conduct does not impair the right of a licensee to set minimum fees chargeable for his services. Unprofessional conduct is not the basis for criminal prosecution unless otherwise declared unlawful. The commission may also impose a suspension, reprimand, or a monetary penalty not to exceed two thousand five hundred dollars, or a combination of revocation, suspension, reprimand or monetary penalty. Any moneys collected from the monetary penalty shall be deposited into the fund of the commission.

36-21A-69. Surrender of license to commission after suspension or revocation. When surrendering his license or when an order of suspension or revocation of his license becomes final, a licensee shall forward the license and identification card at once to the commission.

36-21A-69.1. Responsible broker to surrender associate licenses. If the commission suspends or revokes the license of a responsible broker, the responsible broker shall return the licenses of any associate licensee to the commission at the time the order suspending or revoking the broker's license becomes final.

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36-21A-70. Effect of suspension, revocation or other action taken against qualifying broker -- Revocation or suspension of firm license. If the commission suspends, revokes or takes any other action against a qualifying broker, the action may apply to his firm and the firm license may be revoked, suspended or otherwise disciplined. Each licensee shall terminate his relationship with the disciplined firm if the firm's license has been revoked or suspended.

36-21A-71. Acts constituting unprofessional conduct. Unprofessional conduct includes the following:

- (1) Violating any provisions of this chapter or any rule promulgated by the commission;
- (2) Making a material false statement in the licensee's application for a license or in any information furnished to the commission;
- (3) Making any substantial and willful misrepresentation with reference to a transaction which is injurious to any party;
- (4) Making any false promise or advertisement of a character such as to influence, persuade or induce a party to a transaction to the party's injury or damage;
- (5) Failure to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession belonging to others, commingling funds of others with the licensee's own, failing to keep the funds of others in an escrow or trust account with a bank or other recognized depository in this state, or failing to keep records relative to the deposit, which shall contain any information as may be prescribed by this chapter or the rules promulgated by the commission pursuant to chapter 1-26 relative thereto;
- (6) Being convicted, or pleading guilty or nolo contendere before a court of competent jurisdiction in this or any other state, or before any federal court, of a misdemeanor involving moral turpitude or a felony arising under the laws of this state or under the laws of the United States or any other state that would be a misdemeanor involving moral turpitude or a felony under the laws of this state;
- (7) Claiming or taking any secret or undisclosed amount of compensation or the failure of a licensee to reveal to the licensee's principal or employer the full amount of compensation in connection with any acts for which a license is required under this chapter;
- (8) Failing or refusing upon demand to produce any document, book, or record in the licensee's possession or under the licensee's control, concerning a transaction under investigation by the commission;
- (9) Offering real property for sale or lease without the knowledge and prior written consent of the owner or the owner's authorized agent or on any terms other than those authorized by the owner or the owner's authorized agent;
- (10) Any violation of federal or state fair housing requirements;

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- (11) Failing or refusing upon demand to furnish copies including reproductions of any document pertaining to any transaction dealing with real estate to a person whose signature is affixed thereto;
- (12) Paying compensation or commission in connection with a transaction to any person who is not licensed under this chapter;
- (13) Failing to disclose to an owner in writing the licensee's intention or true position if the licensee directly or indirectly through a third party purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office for sale or lease;
- (14) Failure by a broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete, detailed closing statement, showing all of the receipts and disbursements for the seller; also failure to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what the same was disbursed, and to retain true copies of the statements in the broker's files; also failure to date and sign the closing statement;
- (15) Any other conduct which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of the licensee's license privilege;
- (16) Accepting employment or compensation for appraising real estate contingent upon reporting a predetermined value or issuing an appraisal report on real estate in which the licensee has an undisclosed interest;
- (17) The revocation or suspension of any other license held by a person licensed under this chapter. Any other license includes being licensed as an attorney; real estate salesman, broker or appraiser; insurance licensee; securities licensee; and other similar regulated occupation, trade or profession;
- (18) Using, proposing the use, agreeing to the use or knowingly permitting the use of two or more contracts of sale, earnest money agreements or loan applications, one of which is not made known to the prospective lender or the loan guarantor, to enable the purchaser to obtain a larger loan than the true sales price would allow or to enable the purchaser to qualify for a loan which the purchaser otherwise could not obtain;
- (19) Failing to promptly give a copy of an offer to purchase to the purchaser;
- (20) Failing to promptly give the seller every written offer to purchase obtained;
- (21) Upon obtaining an acceptance of the offer signed by the seller, failing to promptly give a copy of it to both purchaser and seller;
- (22) Failing to make certain that all of the terms and conditions of the transaction are included in the offer to purchase;

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- (23) Giving a title opinion upon the merchantability of the title to property in any transaction in which the licensee participated;
- (24) Preparing any legal document, giving any legal advice, or otherwise engaging in the practice of law. Preparation of the following documents is exempt from this provision:
 - (a) Listing agreements or extensions;
 - (b) Offers to purchase;
 - (c) Offers to lease;
 - (d) Acceptances; and
 - (e) Closing statements;
- (25) 'Permitting the use of a broker's license to enable licensed salesmen to establish and carry on a real estate brokerage business if the broker has only insignificant control of the affairs of the business conducted;
- (26) Taking a net listing whereby a licensee agrees to take as compensation the proceeds of a sale over and above the selling price agreed in the listing contract;
- (27) Failing to put in writing all guarantees of sale and other guarantees made by a licensee to the person listing the property for sale;
- (28) Failing to put in writing any agreement to furnish or sell a warranty;
- (29) Attempting to solicit or attempting to secure listings without first advising the owner that the licensee is a licensee and is engaged in real estate brokerage;
- (30) Failing to protect and promote the interests of the client whom the licensee has undertaken to represent to the best of the licensee's ability;
- (31) Failing to deal fairly with all parties to a transaction;
- (32) Committing any act constituting or demonstrating bad faith, incompetency or fraudulent dealings;
- (33) Using the licensee's position to gain undue influence over a prospective buyer, seller, landlord, or tenant, using the licensee's position to coerce a buyer, seller, landlord, or tenant, or using duress on a buyer, seller, landlord, or tenant;
- (34) Issuing an insufficient funds check;
- (35) In a business enterprise that requires licensing by the commission, associating in any manner with another person who has had a license suspended or revoked by action of the commission while the suspension or revocation is in effect. This prohibition

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includes a corporation, a partnership, an association, a single proprietorship, and an employer-employee relationship. A licensee may act as an agent in a real estate transaction for a person who has had a license suspended or revoked by the commission if the transaction is one that would occur in the ordinary course of the licensee's business;

- (36) Buying, selling, leasing, or exchanging real property under the auspices of a partnership or corporation of which the licensee owns an interest if it is indicated that the purchase or sale is being made by a private party not licensed by the real estate commission;
- (37) Making a listing contract or any other contract with the licensee's principal which allows the licensee to purchase or lease the listed property and charge a commission thereon without obtaining the written consent of the principal to such provision. This written consent shall be in addition to the signing of any listing contract;
- (38) Accepting a note or other nonnegotiable instrument or anything of value not readily negotiable as earnest money on a contract or offer to purchase without the written permission of the licensee's principal; or
- (39) Selling, buying, exchanging or leasing real property in a manner indicating that the licensee is not licensed under this chapter; or
- (40) Improperly influencing or attempting to influence the development, reporting, result, or review of a real estate appraisal by coercion, extortion, or bribery; withholding or threatened withholding of payment of an appraisal fee; conditioning the payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached; requesting the appraiser report a predetermined opinion, conclusion, or valuation or the desired valuation of any person; or any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, and impartiality. This subdivision does not apply to the following acts:
 - (a) Requesting an appraiser to consider additional, appropriate property information;
 - (b) Providing further detail, substantiation, or explanation of the appraiser's value conclusion;
 - (c) Correcting errors in the appraisal report;
 - (d) Withholding payment of an appraisal fee based upon a bona fide dispute regarding the appraiser's compliance with the appraisal standards adopted by the Department of Revenue and Regulation;
 - (e) Retaining a real estate appraiser from panels or lists on a rotating basis; or
 - (f) Supplying the appraiser with information the appraiser is required to analyze under the appraisal standards adopted by the Department of Revenue and Regulation such as agreements of sale, options, or listings of the property to be valued.

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36-21A-72. Restrictions on licensee advertising. A licensee who advertises shall comply with the following:

- (1) Each advertisement shall clearly state the name of the firm with which an individual licensee is associated;
- (2) Each advertisement in which a licensee attempts to secure real estate listings or offers to purchase, sell or lease property, or perform any other act for which a license is required under this chapter, shall clearly disclose that the advertised acts or services are being offered by a licensee;
- (3) No licensee may make any announcement in any media regarding the sale of property which gives any impression that the property sold for a price other than the actual selling price.

Notwithstanding subdivisions (1) to (3), inclusive, of this section, a licensee may advertise in the licensee's individual name an offer to sell or lease property of which the licensee is the owner. The advertisement shall disclose that the owner of the property being sold or leased is a licensee.

36-21A-73. Requirements for listing or management agreements and written authorization from buyers. Repealed by SL 1998, ch 229, § 28.

36-21A-74. Preservation of records. A licensee shall preserve for four years all listings, offers to purchase, closing statements and other records relating to any real estate transaction.

36-21A-75. Closing statements to be furnished by brokers. The listing broker shall furnish a closing statement to the seller. The selling broker shall furnish a closing statement to the buyer.

36-21A-76. Cobrokerage transaction -- Money held in listing broker's trust account. Any earnest money paid in a cooperative or cobrokerage transaction shall be held in the listing broker's trust account.

36-21A-77. Purchaser deposits in unconsummated transactions. If for any reason the seller fails, refuses, neglects or is unable to consummate the transaction as provided in the purchase contract, and through no fault or neglect of the purchaser, the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the commission is earned. This deposit shall be returned to the purchaser at once.

36-21A-78. Substantiation of information in listing agreement -- Latent defects. On taking a listing, a licensee shall substantiate that the information taken in the listing agreement is accurate. As far as latent defects are concerned, it is not a violation of this section if the licensee disclosed to the buyer that the listing information or parts of the listing information are solely the representations of the seller.

36-21A-79. Broker's responsibility for real estate activities of salesman and broker associates. A real estate broker is responsible for the real estate activities conducted by his salesmen and broker associates, whether as employees or independent contractors.

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36-21A-80. Handling of money received by broker for principal. A real estate broker shall remit immediately to the broker's principal all money received by the broker belonging to the principal unless, by the terms of a written employment contract, the broker is authorized to retain possession of the money until the final settlement and consummation of the transaction. In that event the broker shall deposit the money in a federally insured financial institution in a special trust account on the first legal banking day after the acceptance of the contract. The account shall be reconciled at least monthly. The money may not be used by the real estate broker except in connection with the transaction as authorized by the principal.

36-21A-81. Disbursement pursuant to written agreement of trust funds where purchase agreement does not close. If an accepted offer and agreement to purchase does not close, a broker may not disburse any funds held in trust, relative to such real estate transaction, except pursuant to a written instruction of all parties to the transaction or pursuant to a court order.

36-21A-82. Deposit slip and ledger sheet for special trust account -- Records maintained -- Notice to commission as to financial institution and name of account. The broker shall at the time of making the deposit make a deposit slip clearly stating the name of the principal for whom it is deposited. In addition, the broker shall maintain in his office an individual ledger sheet for his principal showing the amount deposited in trust and any expenditures therefrom. The ledger sheet, deposit slip and any other record shall be made available for inspection by the commission upon request. The deposit slip and ledger sheet shall be kept as a part of the records of the broker at least four years from the closing of the transaction. A broker shall notify the commission of the name of the financial institution in which the trust account is maintained and also the name of the account on forms provided by the commission.

36-21A-83. Documents kept by broker remitting immediately to principal. A real estate broker who remits immediately to his principal all money received by him belonging to the principal without using a trust account shall maintain for at least four years the records that completely disclose all financial dealings between the principal and the broker.

36-21A-84. Completed transaction required for compensation of broker -- Promulgation of rules for exceptions. No licensee is entitled to any part of the money paid to him in any transaction as part of his compensation until the transaction has been consummated or terminated. The commission may promulgate rules, pursuant to chapter 1-26, to make reasonable exceptions to this section.

36-21A-85. Agency relationship to owner/seller -- Disclosure -- Representation by one firm of more than one party to a transaction. Repealed by SL 1998, ch 229, § 29, effective January 1, 1999.

36-21A-86. Procedure on revocation of license -- Appeal. No license may be revoked except in compliance with chapter 1-26. An appeal from the decision of the commission may be taken as provided by chapter 1-26.

36-21A-87. Violation of chapter as misdemeanor. Unless punishable under Title 22, a person violating any of the provisions of this chapter is guilty of a Class 1 misdemeanor.

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36-21A-88. Action for compensation of unlicensed persons prohibited. No action or suit may be instituted, nor recovery be had, in any court of this state by a person for compensation for an act done or service rendered, the doing or rendering of which is prohibited under the provisions of this chapter, to other than persons licensed under this chapter, unless such person was licensed under this chapter at the time of offering to perform the act or service or procuring a promise to contract for the payment of compensation for the contemplated act or service.

36-21A-89. Promulgation of rules for administration and enforcement of this chapter. The commission may promulgate rules pursuant to chapter 1-26 relating to the administration and enforcement of the provisions of this chapter in the following areas:

- (1) Procedures for conducting the commission's business;
- (2) Procedures and qualifications for application, minimum requirements for examination, procedures for the examination and the administration of the examination, the required score for passing the examination, and procedures for replacement of a license;
- (3) Requirements for dividing a commission with a broker in another state, requirements for application for licensure by reciprocity and the practice of a nonresident licensee in the state;
- (4) Procedures for application to provide classroom instruction or correspondence work for prelicensing education, qualifications of the instructors and facilities, and procedures for approving classroom instruction and correspondence work and for withdrawing the approval;
- (5) Procedures for disciplinary proceedings, including requirements for filing a complaint, dismissal of a complaint, informal and formal resolution of a complaint, formal complaint and answer requirements, final action and review, disqualification of a commission member from a hearing and authorization for per diem and mileage;
- (6) Procedures for declaratory rulings, petitions for rules and contested cases;
- (7) Requirements for a real estate auction and the requirements, duties and responsibilities of an auctioneer;
- (8) Requirements for mortgage brokers, including areas such as trust accounts, record-keeping, written contracts, full disclosure and restrictions on chargeable costs and expenses;
- (9) Requirements for continuing education including procedures for granting a certificate of accreditation; notification of a material change in an approved course offering; suspension, revocation and denial of course approval; notice to students regarding the course and opportunity for comment; auditing; certificates of attendance; preregistration and limits on correspondence courses;

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- (10) Requirements for property managers, including areas such as trust accounts, auditing, contracts, disclosure, disciplinary matters, financial obligations and records, and property management accounting;
- (11) Qualifications of an applicant for examination and minimum requirements of an examination for a real estate appraiser's license.

36-21A-89.1. Commission to develop disclosure form regarding knowledge of existence of prior manufacturing of methamphetamines. Repealed by SL 2005, ch 230, § 3.

36-21A-90. Promulgation of rules establishing uniform standards of professional appraisal practice. The commission may promulgate rules pursuant to chapter 1-26 establishing uniform standards of professional appraisal practice.

36-21A-91. Injunction for unprofessional conduct -- Election of criminal proceedings or injunction. The commission may commence actions for injunction for unprofessional conduct or, as an alternate to criminal proceedings, for violation of this chapter, chapters 43-15A and 43-15B or rules promulgated pursuant thereto. The commencement of one proceeding by the commission constitutes an election.

36-21A-92. Definition of terms for 36-21A-92 to 36-21A-100. Terms used in § § 36-21A-92 to 36-21A-100, inclusive, mean:

- (1) "Commission," the South Dakota Real Estate Commission;
- (2) "Person," an individual, corporation, limited liability company, partnership, limited partnership, association, joint venture or any other entity, foreign or domestic;
- (3) "Subdivider," a person who causes land to be subdivided into a subdivision for that person or others, or who undertakes to develop a subdivision. However, this does not include a public agency or officer authorized by law to create subdivisions;
- (4) "Subdivision," or "subdivided land," any real estate offered for sale and which has been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 and following, 15 U.S.C. 1701 and following, as such Act existed on January 1, 1980, or real estate located out of this state which is divided or proposed to be divided into fifty or more lots, parcels or units.

36-21A-93. Application for subdivision certificate -- Fee -- Contents -- Additional information. Before subdivided land is offered for sale the subdivider shall apply in writing for a subdivision certificate to the commission on a form furnished by the commission and approved by the attorney general. The application shall be accompanied by a filing fee of one hundred dollars plus twenty-five dollars for each one hundred lots or fraction thereof to be offered for sale. The application shall contain the following information and supporting documents:

- (1) The name, address and business status of the applicant;
- (2) If the applicant is a partnership, the names and addresses of the partners;

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- (3) If the applicant is a corporation, the place of incorporation and the names and addresses of its officers and members of its board of directors;
- (4) The legal description and area of the real estate to be offered for sale, including maps and recorded plats showing the area involved;
- (5) The name and address of the legal owner of the real estate to be offered for sale;
- (6) A certified, audited financial statement fully disclosing the current financial condition of the developer;
- (7) A statement of the condition of the title of the subdivided lands, including encumbrances as of a specified date within thirty days of the application;
- (8) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrances, if any, with dates as to recording, along with the documentary evidence that any mortgagee or trustee of a deed of trust has subordinated his interest in the real estate to the interest of a purchaser of the real estate;
- (9) A true statement of the terms and conditions on which it is intended to dispose of the real estate, together with copies of any contracts intended to be used. The contracts shall contain a provision entitling the purchaser, if he has not seen the land, to an unconditional right to rescind the contract and the unconditional right of refund of all payments made under the contract after inspecting the land if inspection is made within a time provided in the contract which may not be less than four months from the date of the contract and if the demand for refund or rescission of the contract is made within twenty days of the inspection. Any payment made by the purchaser shall be held in trust in a bank located in this state for four months or twenty days after inspection, whichever occurs first, and no portion of the payment may be expended for any purpose before the expiration of the trust period. The rescission period may be waived by the purchaser;
- (10) A statement of the zoning and other governmental regulations affecting the use of the land to be sold or offered for sale disclosing whether or not such regulations have been satisfied;
- (11) A copy of an offering statement which sets forth the material facts with respect to the land to be offered or sold.

After receiving the application, the commission may require such additional information concerning the real estate as it considers necessary.

36-21A-94. Proof by subdivider of ability to provide promised public improvements -- Security. No application may be approved by the commission unless the subdivider offers satisfactory proof of his ability to provide promised public improvements including water, sewer, gas and streets. Satisfactory proof shall be in the form of performance bonds or other security.

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36-21A-95. Investigation of application and inspection of out-of-state real estate -- Expenses borne by applicant. The commission shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All expenses incurred by the commission in investigating the real estate and its proposed sale in this state shall be borne by the applicant and the commission shall require a deposit sufficient to cover such expenses before the investigation.

36-21A-96. Designation of executive director of commission as agent for service of process. Before the approval of an application, the applicant shall file with the commission a designation in writing that appoints the executive director of the commission to act as the applicant's agent, upon whom all judicial and other process or legal notices directed to the applicant may be served. Service upon the designated agent is personal service upon the applicant. Copies of the appointment, certified by the executive director of the commission, are sufficient evidence thereof and shall be admitted into evidence with the same force and effect as the original. In the written designation, the applicant shall agree that any lawful process against the applicant, which is served upon the agent, shall be of the same legal force and validity as if served upon the applicant and that the authority shall continue in force so long as any liability remains outstanding in this state.

36-21A-97. Issuance of certificate -- Annual fee -- Cancellation or renewal of certificate -- Investigation. If the application is approved, the commission shall issue a certificate of registration to the applicant. After issuance of a certificate, an annual fee of fifty dollars plus ten dollars for each one hundred lots or fraction thereof computed on the number of lots in the original application shall be due and payable on or before January first of each year. Failure to remit annual fees when due shall automatically cancel the certificate. The certificate may remain valid if the commission determines from satisfactory investigation that the certificate should be renewed. Before issuing the renewal certificate each year, the certificate holder shall furnish to the commission information as may be requested by the commission. If an investigation is required, the cost of making the investigation shall be paid by the certificate holder in advance.

36-21A-98. Recording of instrument conveying interest in subdivision. An instrument conveying an interest in the subdivided real estate shall be in recordable form and the subdivider or buyer may record such instrument in the county where the real estate is located and in the office where deeds are recorded.

36-21A-99. Cease and desist orders to prevent subdivision sales provisions violations. The executive director, with the consent of the commission, may issue a cease and desist order upon determination that the provisions of § § 36-21A-93 to 36-21A-98, inclusive, have been or are about to be violated.

36-21A-100. Contracts violating subdivision sale provisions void and unenforceable -- Recovery of money paid plus interest. Failure to comply with the provisions of § § 36-21A-93 to 36-21A-98, inclusive, make any contract entered into in this state void and unenforceable. Money paid under that contract to the certificate holder, together with interest at the Category A rate of interest as established in § 54-3-16 from date of the payment, may be recovered in a civil action.

36-21A-101. Establishment of real estate recovery fund -- Purpose. The commission shall establish and maintain a real estate recovery fund, which shall be used to provide a source for payment of unsatisfied judgments obtained by persons aggrieved by the acts of a person licensed

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under this chapter. The commission shall maintain one hundred thousand dollars in the fund to be used strictly for the purpose of recovery of unsatisfied judgments against licensees. The moneys deposited in the fund shall be invested by the commission by establishing an account with the state investment council pursuant to chapter 4-5, and all interest and profits derived from such investment, if the fund exceeds one hundred thousand dollars, shall be transferred to the commission's general fund. The interest and profits shall be retained in the fund until its total reaches one hundred thousand dollars.

36-21A-102. Minimum balance in recovery fund -- Separate fee payable to restore minimum balance. If at the end of any calendar year the amount remaining in the real estate recovery fund is less than one hundred thousand dollars, every person registering pursuant to this chapter shall pay, in addition to the biennial registration fee, a separate fee in an amount declared sufficient by the commission to restore the balance in the fund to at least one hundred thousand dollars.

36-21A-103. Notice to commission of claims against recovery fund -- Intervention by commission. A person commencing an action that may result in the filing of a claim against the real estate recovery fund shall serve a copy of the summons and complaint upon the commission within ten days of service upon the defendant. The commission may intervene in the action pursuant to § 15-6-24(a).

36-21A-104. Application by unsatisfied judgment creditor for payment of loss from recovery fund -- Maximum payment -- Service on commission and judgment debtor -- Hearing on application for payment -- Continuances. If any person obtains a final judgment in any court of competent jurisdiction against a person licensed under this chapter, on grounds of fraudulent, deceptive or dishonest practices, or conversion of trust funds arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a license is required under this chapter, and which cause of action accrued on or after July 1, 1977, the aggrieved person may, upon the judgment becoming final, and upon termination of all proceedings, including reviews, appeals and execution and levy, file a verified application in the circuit court, sixth circuit, Hughes county, for an order directing payment out of the real estate recovery fund of the amount of actual and direct loss in the transaction up to the sum of fifteen thousand dollars of the amount remaining unpaid upon the judgment. Nothing in this chapter may obligate the fund for more than fifteen thousand dollars for each person. A copy of the verified application shall be served upon the commission and upon the judgment debtor, and a certificate or affidavit of such service filed with the court. The court shall conduct a hearing upon the application thirty days after service of the application upon the commission. Upon petition of the commission, the court shall continue the hearing up to an additional sixty days, and upon a showing of good cause may continue the hearing for such further period as the court considers appropriate.

36-21A-105. Facts to be shown at hearing by applicant for payment from recovery fund. At the hearing the applicant shall show the following:

- (1) He is not a spouse of the judgment debtor, or the personal representative of such spouse;
- (2) If he is licensed under this chapter, he was not acting as a principal or agent in a real estate transaction;

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- (3) He has complied with all the requirements of § § 36-21A-101 to 36-21A-115, inclusive;
- (4) He has obtained a judgment stating the amount thereof and the amount owing thereon at the date of the application;
- (5) He has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment;
- (6) If he has discovered property or other assets owned by the judgment debtor and liable to be applied in satisfaction of the debt he shall further show that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized;
- (7) Any amount recovered from the judgment debtor or debtors and any amount recovered in out-of-court settlements as to particular defendants, if any, have been applied to the actual and compensatory damages awarded by the court;
- (8) He has diligently pursued his remedies against all the judgment debtors and all other persons liable to him in the transaction for which he seeks recovery from the real estate recovery fund; and
- (9) He is making the application within one year after the judgment becomes final, or within one year after the termination of any review or appeal of the judgment.

36-21A-106. False statement in proceedings against recovery fund as perjury. Any person who knowingly files with the commission any notice, statement or other document required under § § 36-21A-101 to 36-21A-115, inclusive, which is false or untrue or contains any material misstatement of fact is guilty of perjury.

36-21A-107. Burden of proof as to fraud or conversion -- Presumption when original action was contested by debtor. If an applicant's judgment is by default, stipulation or consent, or if the action against the licensee was defended by a trustee in bankruptcy, the applicant has the burden of proving his cause of action for fraudulent, deceptive or dishonest practices or conversion of trust funds. Otherwise, the judgment creates a rebuttable presumption of the alleged fraudulent, deceptive or dishonest practices or alleged conversion of trust funds.

36-21A-108. Defense by commission of action against recovery fund -- Motion for dismissal -- Compromise. The commission may defend any action on behalf of the fund and shall have recourse to all appropriate means of defense and review including examination of witnesses. The commission may move the court at any time to dismiss the application if it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of § § 36-21A-101 to 36-21A-115, inclusive. The commission shall give written notice to

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the applicant and judgment debtor ten days before the date set for hearing such motion. The commission may, subject to court approval, compromise a claim based upon the application of an aggrieved party. It is not bound by any prior compromise or stipulation of the judgment debtor.

36-21A-109. Defense by judgment debtor in action against recovery fund. The judgment debtor may defend any such action on his own behalf and shall have recourse to all appropriate means of defense and review including examination of witnesses.

36-21A-110. Payment from recovery fund ordered only on valid cause of action -- Prior judgment only prima facie evidence. If the court proceeds upon an application, it shall order payment out of the real estate recovery fund only upon a determination that the applicant has a valid cause of action, and has complied with the provisions of § § 36-21A-101 to 36-21A-115, inclusive. The judgment shall be only prima facie evidence of such cause of action and is not conclusive.

36-21A-111. Order for payment from recovery fund. If the court finds after the hearing that the claim should be levied against the portion of the fund allocated for the purpose of recovery of unsatisfied judgments, the court shall enter an order directed to the commission requiring payment from the fund in the amount payable upon the claim.

36-21A-112. Maximum liability of fund for acts of one licensee. The liability of the fund for the acts of a licensee, when acting as such and occurring before the date of the court order entered pursuant to § § 36-21A-101 to 36-21A-115, inclusive, is terminated whenever such order authorizes payments from the fund for judgments or unsatisfied portions thereof, in an aggregate amount of fifteen thousand dollars on behalf of such licensee.

36-21A-113. Deferred payment of authorized claim -- Interest. If, at any time, the money deposited in the fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the real estate recovery fund, satisfy those unpaid claims or portions thereof, in the order that the claims or portions thereof were originally filed, plus accumulated interest at the Category A rate of interest as established in § 54-3-16.

36-21A-114. Suspension of license when payment from fund authorized -- Repayment to fund required for reinstatement. If the commission pays from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license shall automatically be suspended upon the effective date of an order by the court authorizing payment from the fund. No licensee may be reinstated or issued a license until he has repaid in full the amount paid from the fund on his account plus interest thereon at the Category A rate of interest as established in § 54-3-16. A discharge in bankruptcy does not relieve a person from the penalties and disabilities provided in this section.

36-21A-115. Subrogation of fund to rights under judgment paid -- Assignment. If, upon the order of the court, the commission has paid from the fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid. The judgment creditor shall assign all his right, title and interest in the judgment to the extent of the amount so paid to the commission and any amount and interest so recovered by the commission on the judgment shall be deposited to the fund.

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36-21A-116. Other disciplinary powers unimpaired -- Effect of repayment to fund.

Nothing contained in §§ 36-21A-101 to 36-21A-115, inclusive, limits the authority of the commission to take disciplinary action against any licensee under other provisions of this chapter. The repayment in full of all obligations to the fund by a licensee does not nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of §§ 36-21A-101 to 36-21A-115, inclusive.

36-21A-117. , 36-21A-118. Transferred to §§ 36-21B-3, 36-21B-7.

36-21A-119. Errors and omissions insurance required of salesmen and brokers. The real estate commission shall adopt rules, pursuant to chapter 1-26, requiring as a condition of licensure that all real estate salesman and brokers, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter.

36-21A-120. Group insurance coverage authorized -- Independent errors and omissions coverage. The Real Estate Commission may negotiate by bid with an insurance provider for a group policy under which coverage is available to all licensees with no right on the part of the insurer to cancel any licensee. Any licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

36-21A-121. Commission to determine conditions of errors and omissions coverage. The Real Estate Commission shall determine the terms and conditions of coverage required by § 36-21A-119, including the minimum limits of coverage, the permissible deductible and the permissible exceptions.

36-21A-122. Notice of terms and conditions of errors and omissions -- Certificate of coverage. Each licensee shall be notified of the required terms and conditions of coverage at least thirty days before the biennial license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed annually with the real estate commission by each licensee who elects not to participate in the group insurance program administered by the Real Estate Commission.

36-21A-123. Errors and omissions coverage not required if premium limit unobtainable. Repealed by SL 2001, ch 209, § 1.

36-21A-124. Employment status -- Independent contractor. For purposes of determining employment status, any broker, broker associate, and salesperson who is a natural person and licensed under this chapter is engaged in an independently established profession. Any such licensee is an independent contractor if:

- (1) The licensed broker with whom the licensee is affiliated does not specify by other than general policy the time, method, and location of the licensee's services; and
- (2) The licensed broker with whom the licensee is affiliated compensates the licensee on the basis of work performed without withholding and remitting federal income and social security taxes; and

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- (3) The licensed broker with whom the licensee is affiliated provides only incidental supplies, equipment, and facilities, while the licensee assumes responsibility for vehicular, educational, and other significant professionally related expenses; and
- (4) Either party to the relationship may terminate it at will and without liability.

36-21A-125. "Adverse material fact" defined. For the purposes of this chapter, an adverse material fact is information that negatively affects the value of the property or a party's ability to perform its obligations in a real estate transaction. Adverse material facts include:

- (1) Any environmental hazards affecting the property which are required by law to be disclosed;
- (2) Any material defects in the property;
- (3) Any material defects in the title to the property which are anticipated to survive the closing; and
- (4) Any material limitation on the client's ability to perform under the terms of the contract.

36-21A-126. "Brokerage" defined. For the purposes of this chapter, a brokerage is the business or occupation of a real estate broker. The term includes licensees associated with the broker who have been assigned management duties.

36-21A-127. "Confidential information" defined. For the purposes of this chapter, confidential information is any information given to the licensee in confidence, or any information obtained by the licensee that the licensee knows a reasonable individual would want to keep confidential, unless disclosure of the information is authorized in writing by the client or disclosure of this information is required by law or the information becomes public knowledge. The term, confidential information, does not include material facts about the physical condition of the property.

36-21A-128. Informative acts that do not constitute representation. For the purposes of this chapter, initial acts that a licensee may perform for a consumer that are informative in nature and do not rise to the level of representation on behalf of a consumer include the following:

- (1) Responding to phone inquiries by consumers as to the availability and pricing of real estate services;
- (2) Responding to phone inquiries from a consumer concerning the price or location of real property;
- (3) Attending an open house and responding to questions about the property from a consumer;
- (4) Setting an appointment to view property;
- (5) Responding to questions of consumers walking into a licensee's office concerning real estate services offered on particular properties;

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- (6) Describing a property or the property's condition in response to a consumer's inquiry;
- (7) Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
- (8) Referring a person to another broker or service provider;
- (9) Providing a one-time showing of one property only to a potential buyer or lessee.

36-21A-129. "Substantive contact" defined. For the purposes of this chapter, substantive contact is any performance beyond initial acts described in § 36-21A-128 and includes discussion of:

- (1) Any specific financial qualifications of the buyer; or
- (2) The selling or buying motives or objectives of the seller or buyer, in which the consumer may divulge any confidential personal or financial information, which if disclosed to the other party, could harm that party's bargaining position.

36-21A-130. Agency agreements -- Requirements. Any agency agreement in which a broker represents a seller or lessor shall be in writing and shall contain the proper legal description, the price and terms, the date of authorization, the expiration date, the type of agency relationship established, compensation to be paid, authorization to cooperate with or compensate other brokers, and the signatures of all parties. The licensee who obtains the agreement shall give the person signing a copy of the agreement.

Any agency agreement in which a broker represents a buyer or tenant shall be in writing and shall contain a description of the type and geographical area of property sought by the client, the type of agency relationship established, the compensation to be paid, the date of authorization, the date of expiration, and the signatures of all parties. The licensee who obtains the agreement shall give the person signing a copy of the agreement.

An agency agreement between a broker and a buyer, seller, or lessee may not include a provision for automatic renewal of the agreement at expiration. A property management agreement may include a provision for automatic renewal at expiration if it contains a provision for written cancellation on terms agreeable to all parties to the agreement.

When entering into an agency agreement, a broker shall provide a clear and complete explanation of the broker's representation of the interests of the seller/landlord or buyer/tenant. If the broker represents more than one party in a transaction, the agreement shall state how the representation may be altered. The agreement shall require authorization of all parties to the transaction before the broker initiates any transaction in which the broker would represent all parties.

An agency agreement shall be signed by the responsible broker. However, the responsible broker may authorize a salesperson or broker associate to sign agreements on behalf of the responsible broker.

The commission may promulgate rules pursuant to chapter 1-26 to provide for uniform provisions in any agency agreement under this section.

36-21A-131. Licensee -- Limited relationships. Any licensee performing services authorized by §§ 36-21A-119 to 36-21A-150, inclusive, is limited to the following relationships:

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- (1) Single agent:
 - (g) Seller/landlord agent;
 - (h) Buyer/tenant agent;
- (2) Limited agent;
- (3) Subagent; and
- (4) Transaction broker.

36-21A-132. Duties and obligations of licensee representing seller or landlord. Any licensee representing a seller or landlord has the following duties and obligations:

- (1) To perform the terms of the written agreement made with the client;
- (2) To exercise reasonable skill and care for the client;
- (3) To promote the interest of the client with the utmost good faith, loyalty, and fidelity, including:
 - (a) Seeking a price and terms which are acceptable to the client. However, the licensee is not obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;
 - (b) Presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;
 - (c) Disclosing to the client all adverse material facts actually known by the licensee; and
 - (d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- (4) To account in a timely manner for all money and property received; and
- (5) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes, or regulations.

36-21A-133. Seller's or landlord's agent not to disclose certain information without express authority -- Exceptions. Without the express authority of the seller or landlord, no licensee acting as a seller's or landlord's agent may disclose any confidential information about the client unless disclosure is required by statute or rule or failure to disclose the information would constitute misrepresentation. No cause of action for any person may arise against a seller's agent for making any required or permitted disclosure.

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A seller's agent does not terminate the seller's agency relationship by making any required or permitted disclosures.

36-21A-134. Seller's agent has no fiduciary duty to customer. No licensee acting as a seller's or landlord's agent owes any fiduciary duty or obligation to a customer. A licensee shall provide disclosure of all adverse material facts known by the licensee to any customer.

No seller's or landlord's agent owes any duty to conduct an independent inspection of the property.

36-21A-134.1. No duty to disclose sex offender information. No licensee representing a seller or landlord has a duty to investigate, volunteer, or disclose information regarding a registered sex offender residing on or near the property.

36-21A-135. Seller's agent may show other properties. A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers and may list competing properties for sale or lease without breaching any duty or obligation to the client.

36-21A-136. Duties and obligations of licensee representing buyer or tenant. Any licensee representing a buyer or tenant has the following duties and obligations:

- (1) To perform the terms of any written agreement made with the client;
- (2) To exercise reasonable skill and care for the client;
- (3) To promote the interest of the client with the utmost good faith, loyalty, and fidelity, including:
 - (a) Seeking a price and terms which are acceptable to the client. However, the licensee is not obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;
 - (b) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
 - (c) Disclosing to the client adverse material facts known by the licensee; and
 - (d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- (4) To account in a timely manner for all money and property received; and
- (5) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

36-21A-137. Buyer's or tenant's agent not to disclose certain information without written authority -- Exceptions. Without the express written authority of the buyer or tenant, no

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licensee acting as a buyer's or tenant's agent may disclose any confidential information about the client unless disclosure is required by statute or rule or failure to disclose the information would constitute misrepresentation. No cause of action for any person may arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

A buyer's agent does not terminate the buyer's agency relationship by making any required or permitted disclosures.

36-21A-138. Buyer's agent has no fiduciary duty to customer. No licensee acting as a buyer's or tenant's agent owes any fiduciary duty or obligation to a customer. A licensee shall provide disclosure of all adverse material facts known by the licensee to any customer.

No buyer's or tenant's agent owes any duty to conduct an independent investigation of the client's financial condition.

36-21A-138.1. No duty to volunteer sex offender information--Actual knowledge must be disclosed upon inquiry. No licensee representing a buyer or tenant has a duty to investigate or volunteer information regarding a registered sex offender residing on or near the property. However, upon inquiry by the licensee's client, the licensee representing a buyer or tenant shall disclose to the client any actual knowledge that the licensee may have regarding a registered sex offender residing on or near the property.

36-21A-139. Buyer's agent may show property to competing clients. A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section does not prohibit a buyer's or tenant's agent from showing competing clients the same property and from assisting competing clients in attempting to purchase or lease a particular property.

36-21A-140. Licensee as limited agent -- Written consent of all parties required -- Duties and obligations. A licensee may act as a limited agent only with the informed written consent of all parties to the transaction. A limited agent is an agent for both the seller and the buyer and has the following duties and obligations:

- (1) To perform the terms of any written agreement made with the client;
- (2) To exercise reasonable skill and care for the client;
- (3) To present all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
- (4) To disclose to the client adverse material facts known by the licensee;
- (5) To advise the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- (6) To account in a timely manner for all money and property received; and
- (7) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

36-21A-141. Certain information not to be disclosed by limited agent without written consent. The following information may not be disclosed by a limited agent without the informed written consent of the client to whom the information pertains:

- (1) That a buyer is willing to pay more than the asking price or lease rate offered for the property;
- (2) That a seller is willing to accept less than the asking price or lease rate for the property;
- (3) What the motivating factors are for any client, buying, selling, or leasing the property; and
- (4) That a client will agree to financing terms other than those offered.

36-21A-141.1. Appointment of licensee to act as appointed agent of client to exclusion of other licensees--Limited agent--Information--Rules. A real estate brokerage entering into an agency agreement may, through the responsible broker, appoint to the client those licensees affiliated with the brokerage who will act as appointed agents of that client to the exclusion of all other licensees affiliated with the brokerage. The appointment shall be in writing. A responsible broker is not a limited agent solely because the broker makes an appointment pursuant to this section. However, any licensee who personally represents both the seller and buyer or both the landlord and tenant in a particular transaction is a limited agent and shall comply with the provisions governing limited agents.

When an agent is appointed pursuant to this section, each client, the real estate brokerage, and any appointed licensee is considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law among or between the client, the real estate brokerage, and the appointed agent.

The commission shall promulgate rules pursuant to chapter 1-26 to establish appointed agent procedures regarding disclosure and confidentiality.

36-21A-142. Limited agent not to disclose certain information about one client to another without written authority -- Exceptions. Without the express written authority of a client, no limited agent may disclose to one client any confidential information about the other client unless the disclosure is required by statute or rule or failure to disclose the information would constitute misrepresentation. No cause of action for any person may arise against a limited agent for making any required or permitted disclosure.

A limited agent does not terminate the limited agency relationship by making any required or permitted disclosures.

36-21A-143. "Subagency" defined. For the purposes of this chapter, a subagency is any situation in which a responsible broker or licensees associated with the broker act for another broker's client with written permission of the client. The subagent owes the same obligations and responsibilities to the client as does the client's broker.

36-21A-144. Transaction broker -- Duties and obligations. Any licensee acting as a transaction broker has the following duties and obligations:

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- (1) To perform the terms of any written agreement made with the customer;
- (2) To exercise reasonable skill and care for the customer;
- (3) To present all offers in a timely manner;
- (4) To account in a timely manner for all money and property received;
- (5) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances including fair housing and civil rights statutes or regulations; and
- (6) To disclose to the customer all adverse material facts known by the licensee.

No licensee acting as a transaction broker may advise any party to a transaction to the detriment of another party.

36-21A-145. Transaction broker not responsible for -- Independent inspections -- Statements by seller -- Finances. No licensee acting as a transaction broker has any duty to:

- (1) Conduct an independent inspection of the property for the benefit of any party to the transaction;
- (2) Independently verify the accuracy or completeness of statements made by the seller, landlord, buyer, tenant, or qualified third-party inspector; or
- (3) Conduct an independent investigation of the buyer's or tenant's financial condition.

36-21A-146. Certain information not to be disclosed by transaction broker without written consent. The following information may not be disclosed by the transaction broker without the informed written consent of the customer:

- (1) That a buyer is willing to pay more than the asking price or lease rate offered for the property;
- (2) That a seller is willing to accept less than the asking price or lease rate for the property;
- (3) What the motivating factors are for any customer, buying, selling, or leasing the property;
- (4) That a customer will agree to financing terms other than those offered; and
- (5) Any confidential information about a party to the transaction to the other party unless the disclosure is required by statute or rule or failure to disclose the information would constitute misrepresentation.

36-21A-147. Office policies -- Relationships -- Written disclosure. Every responsible broker shall develop and maintain a written office policy that specifically sets forth agency and brokerage relationships that the broker may establish. At the first substantive contact with a seller or buyer who has not entered into a written agreement with a broker, the licensee shall:

- (1) Disclose in writing to that person the types of agency and brokerage relationships the broker is offering to that person; and
- (2) Provide that person with a written copy of a disclosure on a form prescribed by the commission.

The written disclosure shall contain a signature block for the client or customer to acknowledge receipt of the disclosure. The customer's acknowledgment of disclosure does not constitute a contract with the licensee. If the customer fails or refuses to sign the disclosure, the licensee shall note that fact on a copy of the disclosure and retain the copy.

After a seller and buyer have entered into a written agency or brokerage agreement with a broker, no other licensee is required to make the disclosures required by this section.

The commission may prescribe the disclosure form by rules promulgated pursuant to chapter 1-26.

36-21A-148. Client, licensee not liable for misrepresentation made by the other -- Exception. No client or customer is liable for any misrepresentation made by the licensee arising out of their agency or brokerage agreement unless the client or customer knew of the misrepresentation.

No licensee is liable for a misrepresentation of the licensee's client arising out of the agency agreement unless the licensee knew of the misrepresentation.

In any agency or brokerage relationship, the licensees, each client or customer, and the real estate brokerage are required to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law among or between the clients or customers, the real estate brokerage, and its licensees.

36-21A-149. Duties under common law. This section supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of any licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state.

36-21A-150. Duties of broker or licensee after transaction finished. Unless otherwise provided in the agreement or by law, no broker and licensee associated with that broker engaged as a seller's/landlord's or buyer's/tenant's agent, subagent, limited agent, or transaction broker owes any further duty or obligation to a client or customer after termination, expiration, completion, or performance of the agency or brokerage agreement, except for the following duties:

- (1) Accounting for all moneys and property related to and received during the engagement; and
- (2) Keeping confidential all information received during the course of the engagement.

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36-21A-151. Applicants for licensure and registration and licensees under disciplinary investigation to submit to criminal background check. Each applicant for licensure and registration under this chapter in this state shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the commission shall submit completed fingerprint cards to the Division of Criminal Investigation. Upon completion of the criminal background check, the Division of Criminal Investigation shall forward to the commission all information obtained as a result of the criminal background check. This information shall be obtained prior to licensure of the applicant. The commission may require a state and federal criminal background check for any licensee who is the subject of a disciplinary investigation by the commission. Failure to submit or cooperate with the criminal background investigation is grounds for denial of an application or may result in revocation of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal background investigation.

CHAPTER 15A CONDOMINIUMS

Section

- 43-15A-1. Definition of terms.
- 43-15A-2. Estates subject to chapter.
- 43-15A-3. Establishment of condominium project -- Master deed or lease.
- 43-15A-4. Particulars required in master deed or lease.
- 43-15A-5. Common areas defined.
- 43-15A-6. Joint or common ownership.
- 43-15A-7. Exclusive and common rights of owners.
- 43-15A-8. Recording of transfers and encumbrances of individual units.
- 43-15A-9. Recording of master deeds and leases -- Tax inapplicable to original recordation.
- 43-15A-10. Notice of intent to sell domestic condominium -- Contract voidable if notice not given.
- 43-15A-11. Fee to accompany notice of intent -- Questionnaire -- Form and content.
- 43-15A-12. Inspection of condominium project.
- 43-15A-13. Waiver of initial inspection.
- 43-15A-14. Filing fee and inspection expenses to accompany notice of intent -- Payment to inspector.
- 43-15A-15. Deposit and expenditure of fees.
- 43-15A-16. Public report of examination findings -- Status of report.
- 43-15A-17. Commission report required before offer to sell or taking reservations to purchase.
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- 43-15A-19. Copy of reports issued to prospective purchaser before binding contract for sale -- Time to read copy -- Receipt.
- 43-15A-20. True copies to be exact reproductions of commission's reports.
- 43-15A-21. Receipts kept by developer -- Inspection -- Duration.
- 43-15A-22. Material change in offering prohibited without written notice.
- 43-15A-23. Deposits held in escrow until delivery of deed.
- 43-15A-24. Management or recreation facility contract period limited -- Subsequent contracts by council of co-owners.
- 43-15A-25. False statement, fraud or violation of provisions as misdemeanor.
- 43-15A-26. Investigation of developer suspected of violations -- Examination of books -- Developers to keep records available.
- 43-15A-27. Chapter supplemental to other laws -- Conflict of laws.
- 43-15A-28. Validation of previously established vertical and horizontal property regimes and condominiums -- Deadline for enforcing rights -- Notice of pendency.
- 43-15A-29. Lien for erection, repair or improvement of a single development -- Apportionment of liens.
- 43-15A-30. Promulgation of rules to administer and enforce chapter.

43-15A-1. Definition of terms. Terms as used in this chapter mean:

- (1) "Commission," the South Dakota Real Estate Commission;

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- (2) "Co-owner," any person, firm, corporation, limited liability company, partnership, association, trust, or legal entity, or any combination thereof who owns a condominium within the project;
- (3) "Council of co-owners," all co-owners of the condominium;
- (4) "Master deed" or "master lease," the deed or lease recording the property of the condominium;
- (5) "Project," the entire parcel of real property divided or to be divided into condominiums, including all structures on the property;
- (6) "Property," land whether leasehold or fee simple and the buildings or building, all improvements and structures on the land and all easements, rights and appurtenances belonging to the land;
- (7) "To record," to record pursuant to the laws of this state relating to the recordation of deeds.

43-15A-2. Estates subject to chapter. "Condominium," as used in this chapter, unless the context otherwise requires, shall mean an estate in real property consisting of an undivided interest in portions of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building or industrial and commercial building on such real property, such as, but not restricted to, an apartment, office, or store. A condominium may include in addition a separate interest in other portions of real property. Such estate may, with respect to the duration of its enjoyment, be either an estate of inheritance or perpetual estate, an estate for life, or an estate for years.

43-15A-3. Establishment of condominium project -- Master deed or lease. Whenever a developer, the sole owner, or the co-owners of a building or buildings expressly declare, through the recordation of a master deed or lease, which shall set forth the particulars enumerated by § 43-15A-4, their desire to submit their property to the formation of a condominium established by this chapter, there shall be thereby established a condominium project.

43-15A-4. Particulars required in master deed or lease. The master deed or lease to which § 43-15A-3 refers shall express the following particulars:

- (1) The description of the land, whether leased or in fee simple, and the building or buildings, expressing their respective areas;
- (2) The general description and the number of each condominium, expressing its area, location, and any other data necessary for its identification;
- (3) The description of the common areas of the building or buildings; and
- (4) The provisions requiring the council of co-owners to maintain insurance on the condominium.

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43-15A-5. Common areas defined. "Common areas," as used in this chapter, unless the context otherwise requires and unless otherwise provided in the master deed or lease, includes:

- (1) The land whether fee simple or leased, on which the building or buildings stand;
- (2) The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exits and communication ways;
- (3) The basements, flat roofs, yards, gardens, recreation facilities, and parking areas, unless otherwise provided or stipulated;
- (4) The premises for the lodging of janitors or persons in charge of the building or buildings, except as otherwise provided or stipulated;
- (5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks, pumps, and the like;
- (6) The elevators, garbage incinerators, and in general all devices or installations existing for common use; and
- (7) All other elements of the property rationally of common use or necessary to its existence, upkeep, and safety.

43-15A-6. Joint or common ownership. Any condominium may be jointly or commonly owned by more than one person.

43-15A-7. Exclusive and common rights of owners. Any condominium owner shall have an exclusive right to his condominium and shall have a common right to a share, with other co-owners, in the common areas of the property.

43-15A-8. Recording of transfers and encumbrances of individual units. Provisions shall be made for the recordation of the individual condominiums on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordation.

43-15A-9. Recording of master deeds and leases -- Tax inapplicable to original recordation. A master deed or lease shall be recorded in the same manner and subject to the same provisions of law as are deeds; provided, that no state or local recordation tax upon the value of the property transferred shall apply to any such deed or portion thereof recorded solely for the purpose of complying with the provisions of § 43-15A-3.

43-15A-10. Notice of intent to sell domestic condominium -- Contract voidable if notice not given. Prior to the time when a domestic condominium project is to be offered for sale in this state, the developer shall notify the real estate commission in writing of his intention to sell such offerings. If the developer fails to notify the commission as provided in this chapter, the purchaser may at his option void the contract for sale.

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43-15A-11. Fee to accompany notice of intent -- Questionnaire -- Form and content. The notice of intention to sell shall be accompanied by a fee of twenty-five dollars for each condominium unit up to a maximum of five hundred dollars and by a verified copy of a questionnaire provided by the commission which has been properly completed by the developer. The questionnaire will be in such form and content as will require full disclosure of all material facts, including, but not limited to:

- (1) A full disclosure of rights and privileges to common areas;
- (2) The sales price of each unit;
- (3) Down payment requirement;
- (4) Interest rate on mortgages;
- (5) Estimated annual property tax attributable to the condominium;
- (6) Estimated annual fire and hazard insurance attributable to condominium; and
- (7) The amount to be charged to the purchaser under the maintenance contract and under what circumstances the costs may be raised.

43-15A-12. Inspection of condominium project. After appropriate notification has been made pursuant to § § 43-15A-10 and 43-15A-11, an inspection of the condominium project may be made by the Real Estate Commission.

43-15A-13. Waiver of initial inspection. The Real Estate Commission may waive initial inspection when in its opinion, a preliminary or final public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries. Failure of the commission to notify the developer of its intent to inspect his project within thirty days after notification of intention is properly filed pursuant to § § 43-15A-10 and 43-15A-11 will be construed a waiver of such inspection.

43-15A-14. Filing fee and inspection expenses to accompany notice of intent -- Payment to inspector. When an inspection is to be made of projects, the notice of intention shall be accompanied by the filing fee, together with an amount estimated by the Real Estate Commission to be necessary to cover the actual expenses of such inspection, not to exceed seventy-five dollars a day for each day consumed in the examination of the project plus reasonable first-class transportation expenses, which shall be paid pursuant to § 43-15A-15 as a fee to the board representative inspecting such project.

43-15A-15. Deposit and expenditure of fees. The fees collected in this chapter shall be deposited and expended according to the rules promulgated pursuant to chapter 1-26 by the Real Estate Commission.

43-15A-16. Public report of examination findings -- Status of report. When the Real Estate Commission makes an examination of any project, it shall make a public report of its findings, which shall contain all material facts available. A public report shall be construed to be neither an approval nor a disapproval of a project.

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43-15A-17. Commission report required before offer to sell or taking reservations to purchase. No unit in a condominium project may be offered for sale until the Real Estate Commission has issued a final or substitute public report thereon, nor may reservations to purchase be taken until the commission has issued a preliminary, final, or substitute public report.

43-15A-18. Supplementary report on investigations made after final or substitute report issued -- True copy to purchasers. If, after a final or substitute public report has been issued, the Real Estate Commission decides to conduct further inquiries or investigations in order to protect the general public in its real estate transactions, the commission may issue a supplementary public report describing the findings thereof. Upon the issuance of a supplementary public report, the developer shall issue a true copy thereof to all purchasers.

43-15A-19. Copy of reports issued to prospective purchaser before binding contract for sale -- Time to read copy -- Receipt. No developer may enter into a binding contract or agreement for the sale of any unit in a condominium project until a true copy of the Real Estate Commission's final or substitute public report thereon with all supplementary public reports, if any, has been issued and given to the prospective purchaser who has been given no less than ten days to read same, and, his receipt taken therefor.

43-15A-20. True copies to be exact reproductions of commission's reports. The true copies of the Real Estate Commission's public reports shall be an exact reproduction of those prepared by the commission.

43-15A-21. Receipts kept by developer -- Inspection -- Duration. Receipts taken for any public report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the Real Estate Commission or its deputies, for a period of three years from the date the receipt was taken.

43-15A-22. Material change in offering prohibited without written notice. It is a Class 1 misdemeanor for the developer of the project, after an offering is submitted to the Real Estate Commission, to materially change the setup or value or use of such offering without first notifying the commission in writing of such intended change and substantially notifying all purchasers and prospective buyers of such change.

43-15A-23. Deposits held in escrow until delivery of deed. Any deposit made with a reservation to purchase or a contract to purchase shall be held in escrow in a separate fund for such deposits designated as such until the deed for which a deposit was made is delivered to the depositor.

43-15A-24. Management or recreation facility contract period limited -- Subsequent contracts by council of co-owners. No management or recreation facility contract may be entered into by a developer for a period of longer than two years. All subsequent management or recreation facility contracts shall be made by council of co-owners.

43-15A-25. False statement, fraud, or violation of provisions as misdemeanor. Any person who knowingly authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any project offered for sale or lease, and a person who, with knowledge that an advertisement, pamphlet, prospectus, or letter concerning a project contains a written statement that is false or fraudulent, issues, circulates, publishes, or

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distributes the same, or causes the same to be issued, circulated, published, or distributed, or who, in any other respect, violates or fails to comply with the provisions set forth in § § 43-15A-10 to 43-15A-26, inclusive, or who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any order, decision, demand, or requirement of the Real Estate Commission under § § 43-15A-10 to 43-15A-26, inclusive, is guilty of a Class 1 misdemeanor.

43-15A-26. Investigation of developer suspected of violations -- Examination of books -- Developers to keep records available. If the Real Estate Commission has reason to believe that a developer is violating any provision set forth in § § 43-15A-10 to 43-15A-26, inclusive, or the rules of the commission promulgated pursuant thereto, the commission may investigate the developer's project and examine the books, accounts, records, and files used in the project of the developer. For the purposes of examination, the developer is required to keep and maintain records of all sales transactions and of the funds received by him pursuant thereto, and to make them accessible to the commission upon reasonable notice and demand.

43-15A-27. Chapter supplemental to other laws -- Conflict of laws. Repealed by SL 1980, ch 294, § 20.

43-15A-28. Validation of previously established vertical and horizontal property regimes and condominiums -- Deadline for enforcing rights -- Notice of pendency. Any vertical and horizontal property regime established pursuant to former chapter 43-15, or any condominium established pursuant to chapter 43-15A recorded before January 1, 1992, in the office of the register of deeds of the county in which the land is located, which was in compliance with former chapter 43-15 or chapter 43-15A, respectively, is hereby declared to be valid.

If any person had any vested right in any real property conveyed under either of said chapters, and no action or proceeding to enforce such right was begun prior to July 1, 1993, such right shall be forever barred; and no action or proceeding so brought shall be of any force or effect or maintainable in any court of this state unless, prior to July 1, 1993, there was recorded in the office of the register of deeds of the county in which the real property affected is located, a notice of the pendency of such action, in accordance with the provision of chapter 15-10.

43-15A-29. Lien for erection, repair, or improvement of a single development -- Apportionment of liens. A lien holder who contributes to the erection, alteration, repair, or other general improvement of a single development of condominiums shall apportion his demand among the condominiums affected and shall assert a lien for a proportionate part upon each and upon the ground appurtenant to each respectively.

43-15A-30. Promulgation of rules to administer and enforce chapter. The Real Estate Commission may promulgate rules pursuant to chapter 1-26 relating to the administration and enforcement of the provisions of this chapter.

CHAPTER 15B TIME-SHARE ESTATES

Section

- 43-15B-1. "Time-share" defined.
- 43-15B-2. Restrictions on sales.
- 43-15B-3. Registration of projects.
- 43-15B-4. Fee for registration.
- 43-15B-5. Inspection fee.
- 43-15B-6. Rules.
- 43-15B-7. Sale of unregistered project prohibited -- Exception -- Issuance of restricted licenses.
- 43-15B-8. Forfeited registration -- Restoration -- Fee.
- 43-15B-9. Applicants for licensure and registration and licensees under disciplinary investigation to submit to criminal background check.

43-15B-1. "Time-share" defined. For purposes of this chapter, the term "time-share" means the right to use and occupy a living unit, of which the use and occupancy right is divided among persons holding similar interests within that living unit according to a fixed or variable time schedule on a periodic basis and allotted from the use or occupancy into which the time-share project is divided. There is no distinction between a "time-share use" and a "time-share estate."

43-15B-2. Restrictions on sales. No person may sell, convey, present for sale, or advertise any interest in a time-share project unless he complies with the provisions of this chapter.

43-15B-3. Registration of projects. Any time-share project shall be registered annually with the Real Estate Commission.

43-15B-4. Fee for registration. Application for initial registration under § 43-15B-3 shall be accompanied by a fee set by rule promulgated pursuant to chapter 1-26 not to exceed twenty-five dollars per unit. The total fee may not exceed one thousand dollars per time-share project.

43-15B-5. Inspection fee. The Real Estate Commission may charge an inspection fee in the amount of seventy-five dollars per day for each day estimated to be consumed in the examination of the project, plus additional reasonable expenses, which shall be paid to the commission representative inspecting a project.

43-15B-6. Rules. The Real Estate Commission shall promulgate rules pursuant to chapter 1-26 to implement the provisions of this chapter.

43-15B-7. Sale of unregistered project prohibited -- Exception -- Issuance of restricted licenses. No person may offer to sell in this state any time-share project, or offer to sell outside the state any time-share in a time-share project located within this state without first registering the time-share project with the South Dakota Real Estate Commission. The sale or transfer of a time-share project by an owner other than the developer or sales agent is exempt from this chapter. The Real Estate Commission may issue restricted brokers' or salesmen's licenses for time share brokers or salesmen pursuant to § 36-21-28.1.

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43-15B-8. Forfeited registration -- Restoration -- Fee. If a time-share project is not renewed by the date set by the commission by rule promulgated pursuant to chapter 1-26 the registration for such project is forfeited. A forfeited registration may be restored within ninety days upon payment of a registration fee set by the commission by rule promulgated pursuant to chapter 1-26 not to exceed twenty-five dollars per unit. The total fee may not exceed two hundred fifty dollars per time-share project.

43-15B-9. Applicants for licensure and registration and licensees under disciplinary investigation to submit to criminal background check. Each applicant for licensure and registration under this chapter in this state shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the commission shall submit completed fingerprint cards to the Division of Criminal Investigation. Upon completion of the criminal background check, the Division of Criminal Investigation shall forward to the commission all information obtained as a result of the criminal background check. This information shall be obtained prior to licensure of the applicant. The commission may require a state and federal criminal background check for any licensee who is the subject of a disciplinary investigation by the commission. Failure to submit or cooperate with the criminal background investigation is grounds for denial of an application or may result in revocation of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal background investigation.

CHAPTER 32

LEASE OF REAL PROPERTY

Section

- 43-32-1. Leasing of real property defined.
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- 43-32-11. Use of premises when leased for particular or specified purpose -- Responsibility of lessee -- Rescission of contract.
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- 43-32-13. Modification of lease -- Written notice by landlord, effect -- Termination by tenant.
- 43-32-14. Retention of possession by lessee after expiration of hiring -- Acceptance of rent by lessor -- Renewal of hiring -- Terms.
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- 43-32-16. Tenant receiving notice of adverse proceedings -- Duty to inform landlord.
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- 43-32-18. Termination of lease by landlord before end of agreed term -- Use of premises by tenant contrary to agreement -- Neglect of tenant to make repairs.
- 43-32-19. Termination of lease by tenant -- Neglect of landlord to place tenant in quiet possession of premises -- Neglect to keep premises in good condition -- Destruction of premises.
- 43-32-20. Assignment of lease by lessee -- Breach of agreement -- Recovery of possession -- Remedies of lessor -- Exception -- Security for loan.
- 43-32-21. Assignment of lease by lessor -- Breach of agreement -- Remedies of lessee -- Covenants excepted.
- 43-32-22. Termination of lease -- Agreed term -- Mutual consent -- Acquisition of superior title by tenant.
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- 43-32-23. Termination of lease at pleasure of either party -- Death or incapacity to contract -- Exception.
- 43-32-24. Return of security deposit after termination of tenancy -- Withholding -- Itemized accounting -- Forfeiture of withholding rights -- Punitive damages.
- 43-32-25. Small amount of tenant's property left on premises presumed abandoned -- Disposal by lessor.

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- 43-32-26. Storage of tenant's valuable property left on premises -- Lien -- Disposal as abandoned after waiting period.
- 43-32-27. Cause of action against lessor for retaliatory conduct.
- 43-32-28. Lessee's remedies for retaliatory conduct by lessor.
- 43-32-29. Rights and remedies preserved.
- 43-32-30. Disclosure of knowledge of existence of prior manufacturing of methamphetamines

43-32-1. Leasing of real property defined. Leasing is a contract by which one (the lessor or landlord) gives to another (the lessee or tenant) temporary possession and use of real property for reward and the lessee agrees to return such property to the lessor at a future time.

43-32-2. Limited term of lease -- Agricultural land -- Municipal lots. No lease or grant of agricultural land for a longer period than twenty years, in which shall be reserved any rent or service of any kind, shall be valid.

No lease or grant of any municipal lot for a longer period than ninety-nine years, in which shall be reserved any rent or service of any kind, shall be valid.

43-32-3. Hiring of real property presumed for one year -- Exception. A hiring of real property, other than lodgings in places where there is no usage on the subject, is presumed to be for one year from its commencement unless otherwise expressed in the hiring.

43-32-4. Hiring of lodgings -- Length of term -- Presumption. A hiring of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time of the rent, the hiring is presumed to be monthly.

43-32-5. Lease of real property for more than one year -- Written contract necessary. No agreement for the leasing of real property or an interest therein for a longer period than one year is valid unless the same, or some note or memorandum thereof, be in writing, signed by the lessor or his agent thereunto authorized in writing.

43-32-6. Obligations of lessor of real property -- Tenant's remedies against lessor. A lessor shall deliver the leased premises to the lessee and secure his quiet enjoyment thereof against all lawful claimants.

If the lessor of residential property unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water, or other essential service to the tenant, the tenant may sue for injunctive relief, recover possession by suit, or terminate the rental agreement and, in any case, recover from the lessor damages in an amount equal to two months rent and the return of any advance rent and deposit paid to the lessor by the lessee.

43-32-6.1. Maximum security deposit for residential premises -- Larger deposit by mutual agreement. Any deposit of money, the function of which is to secure the performance of a residential rental agreement or any part of such an agreement, shall be deemed to be a security deposit. A lessor of residential premises may not demand or receive a security deposit, however denominated, in an amount or value in excess of one month's rent except that a larger deposit may be

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agreed upon between the lessor and lessee where special conditions pose a danger to maintenance of the premises.

43-32-7. Hiring part of room for dwelling -- Right to whole of the room for term agreed upon -- Double letting relieves tenant from obligation to pay rent. Repealed by SL 1983, ch 13, § 29.

43-32-8. Residential lessor to keep premises in repair -- Disrepair caused by lessee -- Agreements for repairs in lieu of rent -- Liability to third persons unaffected. In every hiring of residential premises, whether in writing or parol, the lessor shall keep the premises and all common areas in reasonable repair and fit for human habitation and in good and safe working order during the term of the lease except when the disrepair has been caused by the negligent, willful or malicious conduct of the lessee or a person under his direction or control. The lessor shall maintain in good and safe working order and condition all electrical, plumbing, or heating systems of the premises, except when the disrepair has been caused by the negligent, willful or malicious conduct of the lessee or a person under his direction or control.

The parties to a lease or hiring of residential premises may not waive or modify the requirements imposed by this section; however, the lessor may agree with the lessee that the lessee shall perform specified repairs or maintenance in lieu of rent.

The provisions of this section shall be in addition to any covenants or conditions imposed by law or ordinance or by the terms of the lease. Nothing in this section shall be construed to alter the liability of the lessor or lessee of residential premises for injury to third parties.

43-32-9. Failure of lessor to repair premises -- Lessee's remedies. If within a reasonable time after notice to the lessor of conditions requiring repair to make the premises fit for human habitation and to place the same in good and safe working order which the lessor ought to repair he neglects to do so, the lessee may repair the same himself and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor; or the lessee may vacate the premises, in which case he shall be discharged from additional charges of rent or performance of other conditions.

If the cost of necessary repairs exceeds one month's rent, after written notice stating the specific reason for the withholding, the lessee may withhold payment of rent and immediately deposit it in a separate bank or savings and loan account, written evidence of such action to be provided to the lessor upon deposit, maintained only for the purpose of making repairs until such time as the lessor makes the repairs, at which time the lessee shall release the deposit to the lessor or until sufficient money is accumulated in the account for the lessee to cause the repairs to be made and paid for.

43-32-10. Preservation of premises by lessee. In every hiring of residential premises, whether in writing or parol, the lessee shall preserve the premises, appliances, appurtenances, and other leased personalty in good condition, and repair all deteriorations or damage thereto occasioned by his negligent, willful or malicious conduct or such conduct of persons acting under his direction or control.

43-32-11. Use of premises when leased for particular or specified purpose -- Responsibility of lessee -- Rescission of contract. If premises are leased for a particular and specified purpose the tenant must not use the premises for other purposes; and if he does, the landlord may hold him responsible for the safety of the premises during such use, at all events, or he may treat the contract as thereby rescinded.

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43-32-12. Time for payment of rent -- Agricultural and wildland -- Lodging --

Termination of hiring. When there is no contract or usage to the contrary, the rent of agricultural and wildland is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for a hiring shorter than the periods herein specified is payable at the termination of the hiring.

43-32-13. Modification of lease -- Written notice by landlord, effect -- Termination by

tenant. In all leases of lands or tenements or of any interest therein from month to month the landlord may, upon giving notice in writing at least thirty days before the expiration of the month, modify the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. The tenant may terminate his lease effective the first day of the next month by providing notice of termination to the landlord within fifteen days of receipt by the tenant of the notice of modification.

43-32-14. Retention of possession by lessee after expiration of hiring -- Acceptance of

rent by lessor -- Renewal of hiring -- Terms. If a lessee of real property remains in possession thereof after the expiration of the hiring and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year.

43-32-15. Renewal of hiring of real property presumed unless notice given of

termination. A hiring of real property for a term not specified by the parties is deemed to be renewed as stated in § 43-32-14 at the end of the term implied by law unless one of the parties gives notice to the other of his intention to terminate the same at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

43-32-16. Tenant receiving notice of adverse proceedings -- Duty to inform landlord.

Every tenant who receives notice of any proceeding to recover the real property occupied by him or the possession thereof must immediately inform his landlord of the same and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice or to deliver to him, if in writing.

43-32-17. Attornment of tenant to stranger, validity -- Consent of landlord --

Judgment. The attornment of a tenant to a stranger is void unless it is made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

43-32-18. Termination of lease by landlord before end of agreed term -- Use of premises

by tenant contrary to agreement -- Neglect of tenant to make repairs. A landlord may terminate a lease and reclaim the premises before the end of the agreed term:

- (1) When the tenant uses or permits a use of the premises in a manner contrary to the lease agreement; or
- (2) When the tenant does not within a reasonable time after request make such repairs as he may be bound to make.

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43-32-19. Termination of lease by tenant -- Neglect of landlord to place tenant in quiet possession of premises -- Neglect to keep premises in good condition -- Destruction of premises. A tenant may terminate a lease before the end of the term:

- (1) When the landlord does not within a reasonable time after request fulfill his obligations, if any, as to placing and securing the tenant in quiet possession of the premises or putting the premises into good condition or repairing the same; or
- (2) When the greater part of the leased premises or that part which was, and which the landlord had at the time of leasing, reason to believe was the material inducement to the tenant to enter into the contract, is destroyed, from any other cause than the ordinary negligence of the tenant.

43-32-20. Assignment of lease by lessee -- Breach of agreement -- Recovery of possession -- Remedies of lessor -- Exception -- Security for loan. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease or for recovery of the possession, he has against the assignees of the lessee for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan and is not accompanied by possession of the premises.

43-32-21. Assignment of lease by lessor -- Breach of agreement -- Remedies of lessee -- Covenants excepted. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against encumbrances or relating to the title or possession of the premises.

43-32-22. Termination of lease -- Agreed term -- Mutual consent -- Acquisition of superior title by tenant. A lease is terminated:

- (1) By the expiration of the agreed term;
- (2) By the mutual consent of the parties;
- (3) By the tenant acquiring a title to the leased premises superior to that of the landlord.

43-32-22.1. Continuation of farm lease absent notice -- Time for notice -- Termination without notice in case of default -- Grassland included. In the case of farm tenants, occupying and cultivating agricultural land of forty acres or more, under an oral lease, the tenancy shall continue for the following crop year upon the same terms and conditions as the original lease unless written notice for termination is given by either party to the other by September first, whereupon the tenancy shall terminate March first following. The tenancy may not continue because of absence of notice if there is default in the performance of the existing rental agreement. For the purpose of this section, agricultural land includes grassland, either native or tame.

43-32-23. Termination of lease at pleasure of either party -- Death or incapacity to contract -- Exception. If a lease is terminable at the pleasure of one of the parties, it is terminated by notice to the other of such party's death or incapacity to contract. In other cases it is not terminated by such death or incapacity.

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43-32-24. Return of security deposit after termination of tenancy -- Withholding -- Itemized accounting -- Forfeiture of withholding rights -- Punitive damages. Every lessor of residential premises shall, within two weeks after the termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the security deposit to the tenant, or furnish to the tenant, a written statement showing the specific reason for the withholding of the deposit or any portion thereof. The lessor may withhold from such deposit only such amounts as are reasonably necessary to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement or to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted. Within forty-five days after termination of the tenancy, upon request of the lessee, the lessor shall provide the lessee with an itemized accounting of any deposit withheld.

Any lessor of residential premises who fails to comply with this section shall forfeit all rights to withhold any portion of such deposit.

The bad faith retention of a deposit or any portion of a deposit by a lessor of residential premises in violation of this section, including failure to provide the written statement and itemized accounting required by this section, shall subject the lessor to punitive damages not to exceed two hundred dollars.

43-32-25. Small amount of tenant's property left on premises presumed abandoned -- Disposal by lessor. The property of a lessee, the total reasonable value of which does not exceed five hundred dollars, left on leased residential premises by the lessee for ten days after the lessee has quit the premises, is presumed to have been abandoned by the tenant and the lessor of the residential premises may dispose of the abandoned property.

43-32-26. Storage of tenant's valuable property left on premises -- Lien -- Disposal as abandoned after waiting period. The property of a lessee, of a total reasonable value exceeding five hundred dollars, left on leased residential premises by the lessee after the lessee has quit the premises, shall be stored by the lessor. The lessor shall have a lien on the property to the extent of the costs of handling and storing the property. After storing the property for thirty days or more the lessor may treat the property as abandoned and dispose of it.

43-32-27. Cause of action against lessor for retaliatory conduct. A cause of action may arise in favor of a lessee and against a lessor of residential property, including a manufactured or mobile home community owner, for retaliation by the lessor against the lessee if the lessor increases rents above fair market value; if the lessor decreases electric, gas, water, or sewer services; or if the lessor gives the lessee notice to vacate the premises when such notice is not based upon a breach of the terms of the lease; subsequent to any of the following special events:

- (1) The lessor has received written notice from the lessee or a governmental agency that the lessee has complained to a governmental agency charged with responsibility for enforcement of a building or housing code violation applicable to the premises and materially affecting health and safety, and the complaint is determined to be reported in good faith; or
- (2) The lessee has given written notice to the lessor of a condition requiring repair pursuant to § 43-32-9; or
- (3) The lessee has organized or become a member of a tenant's union or organization.

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It shall be a defense to this cause of action that the notice to vacate the premises was given by the lessor more than one hundred eighty days after the occurrence of a special event. The failure of the lessor to renew any written lease prior to or upon its expiration, is not retaliation.

43-32-28. Lessee's remedies for retaliatory conduct by lessor. If the lessor acts in violation of § 43-32-27, the lessee is entitled to the remedies provided in § 43-32-6. The court may award the lessee reasonable attorney's fees, not to exceed five hundred dollars.

43-32-29. Rights and remedies preserved. All other rights or remedies of the lessor and the lessee pursuant to any other provision of the law are preserved, except as modified by §§ 43-32-27 and 43-32-28.

43-32-30. Disclosure of knowledge of existence of prior manufacturing of methamphetamines. In any hiring of a residential premises, any lessor who has actual knowledge of the existence of any prior manufacturing of methamphetamines on the premises shall disclose that information to any lessee or any person who may become a lessee. If the residential premises consists of two or more housing units, the disclosure requirements provided by this section only apply to the unit where there is knowledge of the existence of any prior manufacturing of methamphetamines.

CHAPTER 16

FORCIBLE ENTRY AND DETAINER

Section

- 21-16-1. Grounds for maintenance of action.
- 21-16-2. Notice to quit required before commencement of proceedings -- Service and return.
- 21-16-3. Jurisdiction of courts.
- 21-16-4. Joinder of actions.
- 21-16-5. Survival of cause despite death of plaintiff.
- 21-16-6. Verified complaint required -- Service with summons -- Procedure as in other actions.
- 21-16-7. Time allowed for appearance by defendant -- Undertaking required for adjournment.
- 21-16-8. Time action brought on for trial -- Special venire in jury cases.
- 21-16-9. Certification to circuit court of title and boundary questions raised in magistrate court.
- 21-16-10. Judgment for plaintiff -- Elements included.
- 21-16-11. Attorney fees taxed as costs.
- 21-16-12. Time of serving execution.

21-16-1. Grounds for maintenance of action. An action of forcible entry and detainer, or of detainer only, is maintainable:

- (1) If a party has by force, intimidation, fraud, or stealth, entered upon the prior actual possession of real property or the occupied structure of another, and detains the same;
 - (2) If a party, after entering peaceably upon real property or an occupied structure, turns out by force, threats, or menacing conduct, the party in possession;
 - (3) If a party by force or by menaces and threats of violence unlawfully holds and keeps the possession of any real property, or occupied structure, whether the same was acquired peaceably or otherwise;
 - (4) If a lessee in person or by subtenants holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after the same shall be due;
 - (5) If a party continues in possession after a sale of the real property or occupied structure under mortgage, execution, order, or any judicial process, after the expiration of the time fixed by law for redemption, and after the execution and delivery of a deed or instrument of ownership;
 - (6) If a party continues in possession after a judgment in partition, or after a sale under an order or decree of a circuit court;
 - (7) If a lessee commits waste upon the leased premises, or does or fails to perform any act which, under the terms of the lease operates to terminate the same.
- The term, occupied structure, used in this chapter is defined in subdivision 22-1-2(28).

FORCIBLE ENTRY AND DETAINER

21-16-2. Notice to quit required before commencement of proceedings -- Service and return. In all cases arising under subdivisions 21-16-1(4), (5), and (6), three days' written notice to quit must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted, and may be served and returned in like manner as a summons is served and returned. On the second service attempt, at least six hours after the previous service attempt, the notice to quit may be posted in a conspicuous place on the property, and also delivered to a person there residing, if such person can be found; and also sent by first class mail addressed to the tenant at the place where the property is situated.

21-16-3. Jurisdiction of courts. Any circuit court or magistrate court presided over by a magistrate judge has jurisdiction in any case of forcible entry and detainer, or of detainer only, of real property or an occupied structure within its county.

21-16-4. Joinder of actions. An action under the provisions of this chapter cannot be brought in connection with any other except for rents and profits or damages but the plaintiff may bring separate actions for the same if he so desire.

21-16-5. Survival of cause despite death of plaintiff. The legal representative of a person who might have been plaintiff, if alive, may bring an action under this chapter after his death.

21-16-6. Verified complaint required -- Service with summons -- Procedure as in other actions. The complaint must be in writing and verified by the plaintiff or his agent or signed by his attorney, and served with a summons, and the procedure, except as otherwise provided, shall be the same as in other actions in the court where the action is pending.

21-16-7. Time allowed for appearance by defendant -- Undertaking required for adjournment. The time for appearance and pleading shall be four days from the time of service on the defendant, and no adjournment or continuance shall be made for more than five days, unless the defendant applying therefor shall give an undertaking to the plaintiff with good and sufficient surety to be approved by the court, conditioned for the payment of the rent that may accrue, together with costs if judgment be rendered against the defendant.

21-16-8. Time action brought on for trial -- Special venire in jury cases. An action under this chapter may be brought on for trial upon two days' notice after issue is joined. If a jury trial be demanded and no jury is in attendance on the day the action is noticed for trial, the court shall cause a special venire to issue as in cases where extra jurors are required, and proceed to impanel a jury and try the action as in other civil cases.

21-16-9. Certification to circuit court of title and boundary questions raised in magistrate court. If the title to or boundary of the real property or the title to an occupied structure in any wise comes in question, in magistrate court, the case shall be certified to the circuit court as provided by rule of the Supreme Court.

21-16-10. Judgment for plaintiff -- Elements included. If the finding of the court or the verdict of the jury be in favor of the plaintiff, the judgment shall be for the delivery of possession to the plaintiff, and for rents and profits or damages, where the same are claimed in the complaint, and for costs.

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21-16-11. Attorney fees taxed as costs. In any case of forcible entry and detainer, or detainer only, the court may tax as a part of the costs in the case, to the prevailing party, reasonable attorney fees, whether a trial is had or not, if prevailing party is represented by a licensed attorney.

21-16-12. Time of serving execution. No execution for possession can be served except in the daytime.

CHAPTER 4 TRANSFER OF PROPERTY

Section

- 43-4-1. Transfer of property defined.
- 43-4-2. Property subject to transfer -- Rights of trustee, conservator or personal representative.
- 43-4-3. Property not subject to transfer.
- 43-4-4. Voluntary transfer of property defined.
- 43-4-5. Transfer without writing where not required by statute.
- 43-4-6. Transfer in writing a grant.
- 43-4-7. Grant takes effect upon delivery by grantor -- Presumption as to delivery.
- 43-4-8. Absolute delivery of grant required -- Conditional delivery ineffective.
- 43-4-9. Constructive delivery of grant -- Agreement of parties.
- 43-4-10. Constructive delivery of grant to stranger for benefit of grantee.
- 43-4-11. Escrow delivery of grant.
- 43-4-12. Redelivery of grant does not transfer title.
- 43-4-13. Grant interpreted as contract.
- 43-4-14. Construction of grant -- Limitations -- Operative words.
- 43-4-15. Irreconcilable parts of grant -- Prevailing part.
- 43-4-16. Grantee favored in interpretation of grant -- Exception.
- 43-4-17. Title transferred -- Intention of parties.
- 43-4-18. Incidents included with thing transferred.
- 43-4-19. Transfer of present interest and benefit of condition or covenant.
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- 43-4-26. Falsification of value of real estate or false claim of exemption as misdemeanor.
- 43-4-27. Satisfaction of bequest, devise, or transfer in trust by distribution of assets in kind at values determined for federal estate tax purposes -- Appreciation or depreciation in value considered.
- 43-4-28. Effective date of application of provisions as to distributions at values determined for federal estate tax purposes.
- 43-4-29 to 43-4-36. Repealed
- 43-4-37. Definition of terms for required disclosures in certain real estate transfers.
- 43-4-38. Buyer furnished completed disclosure statement prior to written offer-- Amendment.
- 43-4-39. Terminating written offer made prior to disclosure statement.
- 43-4-40. Liability for defect disclosed in statement.
- 43-4-41. Good faith disclosure required.
- 43-4-42. Liability for failure to comply with disclosure statement requirements.
- 43-4-43. Application of disclosure statement requirements.
- 43-4-44. Property condition disclosure statement.
- 43-4-45. Repealed.

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43-4-1. Transfer of property defined. Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

43-4-2. Property subject to transfer -- Rights of trustee, conservator, or personal representative. Property of any kind may be transferred to a person, estate, trust, conservatorship, personal representative of an estate, conservator of an estate, or trustee, except as otherwise provided by this chapter.

In those cases where a trustee, conservator, or personal representative of an estate holds title to property, he holds it in a fiduciary capacity for the purposes of administration. In those cases where the trust, conservatorship, or estate itself is the grantee or transferee, the trustee, conservator, or personal representative thereof shall have the same rights, powers, duties, and liabilities with respect to the property so transferred as if the deed or other instrument of transfer had named the trustee, conservator, or personal representative as grantee or transferee.

43-4-3. Property not subject to transfer. A mere possibility, not coupled with an interest, cannot be transferred.

A mere right of reentry, or of repossession for breach of a condition subsequent, cannot be transferred to anyone except the owner of the property affected thereby.

43-4-4. Voluntary transfer of property defined. A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general, except that a consideration is not necessary to its validity.

43-4-5. Transfer without writing where not required by statute. A transfer may be made without writing in every case in which a writing is not expressly required by statute.

43-4-6. Transfer in writing a grant. A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant" in this title includes all these instruments, unless it is specially applied to real property.

43-4-7. Grant takes effect upon delivery by grantor -- Presumption as to delivery. A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor.

A grant duly executed is presumed to have been delivered at its date.

43-4-8. Absolute delivery of grant required -- Conditional delivery ineffective. A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute; and the instrument takes effect thereupon discharged of any condition on which the delivery was made.

43-4-9. Constructive delivery of grant -- Agreement of parties. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery.

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43-4-10. Constructive delivery of grant to stranger for benefit of grantee. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered where it is delivered to a stranger for the benefit of a grantee, and his assent is shown or may be presumed.

43-4-11. Escrow delivery of grant. A grant may be deposited by the grantor with a third person, to be delivered on the performance of a condition, and on delivery by the depository, it will take effect. While in the possession of the third person and subject to condition, it is called an escrow.

43-4-12. Redelivery of grant does not transfer title. Redelivering a grant of real property to the grantor or canceling it does not operate to retransfer the title.

43-4-13. Grant interpreted as contract. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided by this chapter.

43-4-14. Construction of grant -- Limitations -- Operative words. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

If the operative words of a grant are doubtful, recourse may be had to its recitals to assist construction.

43-4-15. Irreconcilable parts of grant -- Prevailing part. If several parts of a grant are absolutely irreconcilable, the former part prevails.

43-4-16. Grantee favored in interpretation of grant -- Exception. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

43-4-17. Title transferred -- Intention of parties. A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has, unless a different intention is expressed or is necessarily implied.

43-4-18. Incidents included with thing transferred. The transfer of a thing transfers also all its incidents unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

43-4-19. Transfer of present interest and benefit of condition or covenant. A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

43-4-20. Definition of terms. Terms used in §§ 43-4-20 to 43-4-26, inclusive, mean:

- (1) "Deed," any instrument for the purpose of transferring or conveying the fee title to real property;
- (2) "Register," the register of deeds of any county in the State of South Dakota; and
- (3) "Value," in the case of any deed not a gift, the amount of the full consideration therefor paid, or to be paid.

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43-4-21. Imposition and amount of real estate transfer fee. A fee is hereby imposed at the rate of fifty cents for each five hundred dollars of value or fraction thereof upon the privilege of transferring title to real property in the State of South Dakota, which fee shall be paid by the grantor.

43-4-22. Exemptions from real estate transfer fee. The fee imposed by § 43-4-21 does not apply to any transfer of title:

- (1) Recorded before July 1, 1968;
- (2) By or to the United States of America, this state, or any instrumentality, agency, or political subdivision of either;
- (3) Solely in order to provide for or to release security for a debt or obligation;
- (4) Which confirms or corrects a deed previously executed and recorded;
- (5) Between husband and wife, or parent and child with only nominal actual consideration therefor;
- (6) On sale for delinquent taxes or assessments, sheriffs' deeds, other deeds issued in foreclosure actions or proceedings or deeds issued in lieu of foreclosure actions or proceedings;
- (7) On partition;
- (8) Pursuant to any mergers or consolidations of corporations or limited liability companies or plans of reorganization by which substantially all of the assets of corporations or limited liability companies are transferred;
- (9) By a subsidiary corporation to its parent corporation for no consideration, nominal consideration, or in sole consideration of the cancellation or surrender of the subsidiary's stock;
- (10) Pursuant to decrees of distribution entered in any decedent's estate;
- (11) Between an individual grantor, or grantors, and a corporation, where the grantor or grantors and the owner of the majority of the capital stock of the corporation are the same person;
- (12) Between any corporation and its stockholders or creditors, or between any limited liability company and its members or creditors, if to effectuate a dissolution of the corporation or limited liability company it is necessary to transfer the title of real property from the corporate entity to the stockholders or creditors;
- (13) On cemetery lots and grave sites;

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- (14) Between an individual grantor, or grantors, and a limited or general partnership if the grantor or grantors and the owner of the majority interest in the limited or general partnership are the same person;
- (15) Between a fiduciary and a beneficiary of the fiduciary or between a fiduciary and a third party, if the transfer or conveyance is to accommodate the fiduciary relationship;
- (16) Between individuals, regardless of the relationship, if the conveyance is an absolute gift without consideration of any kind in return for the conveyance;
- (17) Pursuant to a decree of divorce, annulment, or separate maintenance or pursuant to a settlement agreement approved or adopted by a decree of divorce, annulment, or separate maintenance;
- (18) For which no consideration was given;
- (19) Between any limited liability company and its members.

43-4-23. Exempt transfers to be marked. Each transfer of title not subject to the fee as provided in § 43-4-21, shall have the words "exempt from transfer fee" stated thereon and indicate the applicable subdivision of § 43-4-22 under which the exemption is claimed.

43-4-24. Collection of real estate transfer fee by register -- Amount stamped on face of deed. At the time any deed evidencing a transfer of title subject to the fee imposed by § 43-4-21 is offered for recordation, the register shall collect the amount of the fee due thereon based upon the value declared and shall cause the amount of the fee so collected to be impressed by a stamp in red ink on the face of the deed after recordation.

43-4-25. Disposition of proceeds of real estate transfer fee collections -- Records of register. The proceeds of all fees collected under § 43-4-21 shall be remitted on a monthly basis to the credit of the county general fund by the register, who shall obtain a receipt therefor from the county treasurer and keep such records as may be prescribed by the state auditor general.

43-4-26. Falsification of value of real estate or false claim of exemption as misdemeanor. No person may intentionally falsify the value of transferred real estate to the register or intentionally claim a transfer to be "exempt from transfer fee" with knowledge that the transfer does not fall within the exemptions provided in this chapter and to pay an insufficient fee or no fee on such transfer as provided in § 43-4-21. A violation of this section is a Class 1 misdemeanor.

43-4-27. Satisfaction of bequest, devise, or transfer in trust by distribution of assets in kind at values determined for federal estate tax purposes -- Appreciation or depreciation in value considered. Whenever under any last will, or trust indenture, the executor, trustee, or other fiduciary is required to, or has an option to, satisfy a bequest, devise, or transfer in trust to or for the benefit of the surviving spouse, or other beneficiary, in kind at the values as finally determined for federal estate tax purposes, the executor, trustee, or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, satisfy such bequest, devise, or transfer by distribution of assets, including cash, fairly representative of the appreciation or depreciation in the value of all properties available for distribution in satisfaction of such bequest, devise, or transfer.

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43-4-28. Effective date of application of provisions as to distributions at values determined for federal estate tax purposes. The provisions of § 43-4-27 shall apply to wills of the kind mentioned of all decedents dying before or after July 1, 1968, and to all trust indentures of the kind mentioned, whether made before or after July 1, 1968, and to the distributions of assets under all such wills or trust indentures, made after July 1, 1968, but it shall not apply to any distributions made prior to July 1, 1968, and shall not impose any liability or obligation upon any fiduciary as a result of any distribution prior to July 1, 1968.

43-4-29. Disclaimer of property or interest receivable from decedent, lifetime transfer, or as insurance or retirement beneficiary. Repealed by SL 1995, ch 167, § 184.

43-4-30. Time for written disclaimer of interest receivable under will or by inheritance -- Retroactive effect of disclaimer. Repealed by SL 1995, ch 167, § 184.

43-4-30.1. Time for disclaimer of interest receivable as surviving joint tenant -- Retroactive effect -- Passage to other joint tenants or by will or succession. Repealed by SL 1995, ch 167, § 184.

43-4-30.2. Time for written disclaimer of interest receivable as beneficiary of insurance policy, retirement plan or other contract -- Retroactive effect. Repealed by SL 1995, ch 167, § 184.

43-4-31. Time for disclaimer of interest created by lifetime transfer -- Retroactive effect. Repealed by SL 1995, ch 167, § 184.

43-4-31.1. Time for disclaimer after age twenty-one. Repealed by SL 1995, ch 167, § 184.

43-4-32. Power of testator or settlor to provide for disclaimers. Repealed by SL 1995, ch 167, § 184.

43-4-33. Provisions for written disclaimers deemed additional to other means. Repealed by SL 1995, ch 167, § 184.

43-4-34. Untimely disclaimers construed as assignments. Repealed by SL 1995, ch 167, § 184.

43-4-35. Disclaimer available to executors, administrators, conservators or other personal representatives -- Time for exercising disclaimer. Repealed by SL 1995, ch 167, § 184.

43-4-36. Acts barring or invalidating disclaimer -- Spendthrift provision -- Binding effect of disclaimer or waiver of right. Repealed by SL 1995, ch 167, § 184.

43-4-37. Definition of terms for required disclosures in certain real estate transfers. Terms used in § § 43-4-38 to 43-4-44, inclusive, mean:

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- (1) "Buyer," a person negotiating or attempting to become an owner of residential real property by means of a transfer which is subject to § § 43-4-38 to 43-4-44, inclusive;
- (2) "Disclosure statement," the property condition disclosure statement as provided in § 43-4-44;
- (3) "Residential real property," all residential real property consisting of not more than four family dwelling units, all of which are contained in one structure;
- (4) "Seller," an owner of residential real property;
- (5) "Transfer," a sale, exchange, installment sale contract, lease with an option to purchase, other option to purchase, or a ground lease coupled with improvements.

43-4-38. Buyer furnished completed disclosure statement prior to written offer -- Amendment. The seller of residential real property shall furnish to a buyer a completed copy of the disclosure statement before the buyer makes a written offer. If after delivering the disclosure statement to the buyer or the buyer's agent and prior to the date of closing for the property or the date of possession of the property, whichever comes first, the seller becomes aware of any change of material fact which would affect the disclosure statement, the seller shall furnish a written amendment disclosing the change of material fact.

43-4-39. Terminating written offer made prior to disclosure statement. If the disclosure statement or a material amendment to the disclosure statement is delivered to the buyer after the buyer has made a written offer, the buyer may terminate the offer by delivering a written notice of termination to the seller or the seller's agent within three days after the disclosure statement or amendment is delivered in person or within six days after the disclosure statement or amendment is delivered by deposit in the mail.

43-4-40. Liability for defect disclosed in statement. Except as provided in § 43-4-42, a seller is not liable for a defect or other condition in the residential real property being transferred if the seller truthfully completes the disclosure statement.

43-4-41. Good faith disclosure required. The seller shall perform each act and make each disclosure in good faith.

43-4-42. Liability for failure to comply with disclosure statement requirements. A transfer that is subject to §§ 43-4-37 to 43-4-44, inclusive, is not invalidated solely because a person fails to comply with §§ 43-4-37 to 43-4-44, inclusive. However, a person who intentionally or who negligently violates §§ 43-4-37 to 43-4-44, inclusive, is liable to the buyer for the amount of the actual damages and repairs suffered by the buyer as a result of the violation or failure. In any court action pursuant to this section, the court may award costs and attorney fees to the prevailing party. Nothing in this section precludes or restricts any other rights or remedies of the buyer or seller.

43-4-43. Application of disclosure statement requirements. Sections 43-4-37 to 43-4-44, inclusive, do not apply to the following transfers:

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- (1) Transfers pursuant to court order, including transfers ordered by probate court in the administration of an estate, transfers between spouses resulting from a judgment of dissolution of marriage or legal separation, transfer pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain, transfers by government agencies, and transfers resulting from a decree for specific performance;
- (2) Transfers to a mortgagee by a mortgagor in default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property by foreclosure or by a deed in lieu of foreclosure or transfers by a collateral assignment of beneficial interest;
- (3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- (4) Transfers from one co-owner to one or more other co-owners;
- (5) Transfers made to a spouse, a child, a parent, a sibling, a grandchild, or a grandparent;
- (6) Transfers of newly constructed residential real property which has never been occupied.

43-4-44. Property condition disclosure statement. The following form shall be used for the property condition disclosure statement:

SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

(This disclosure shall be completed by the seller. This is a disclosure required by law. If you do not understand this form, seek legal advice.)

Seller _____

Property Address _____

This Disclosure Statement concerns the real property identified above situated in the City of _____ County of _____, State of South Dakota.

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH § 43-4-38. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR ANY AGENT REPRESENTING ANY PARTY IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PARTIES MAY WISH TO OBTAIN.

Seller hereby authorizes any agent representing any party in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

IF ANY MATERIAL FACT CHANGES BEFORE CONVEYANCE OF TITLE TO THIS PROPERTY, THE SELLER MUST DISCLOSE SUCH MATERIAL FACT WITH A WRITTEN AMENDMENT TO THIS DISCLOSURE STATEMENT.

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I. LOT OR TITLE INFORMATION

1. When did you purchase or build the home? _____

If the answer is yes to any of the following, please explain under additional comments or on an attached separate sheet.

2. Were there any title problems when you purchased the property? Yes ____ No ____

3. Are there any recorded liens or financial instruments against the property, other than a first mortgage? Yes ____ No ____

4. Are there any unrecorded liens or financial instruments against the property, other than a first mortgage; or have any materials or services been provided in the past one hundred twenty days that would create a lien against the property under chapter 44-9? Yes ____ No ____ Unknown ____

5. Are there any easements which have been granted in connection with the property (other than normal utility easements for public water and sewer, gas and electric service, telephone service, cable television service, drainage, and sidewalks)? Yes ____ No ____ Unknown ____

6. Are there any problems related to establishing the lot lines/boundaries? Yes ____ No ____ Unknown ____

7. Do you have a location survey in your possession or a copy of the recorded plat? If yes, attach a copy. Yes ____ No ____ Unknown ____

8. Are you aware of any encroachments or shared features, from or on adjoining property (i.e. fences, driveway, sheds, outbuildings, or other improvements)? Yes ____ No ____

9. Are you aware of any covenants or restrictions affecting the use of the property in accordance with local law? If yes, attach a copy of the covenants and restrictions. Yes ____ No ____

10. Are you aware of any current or pending litigation, foreclosure, zoning, building code or restrictive covenant violation notices, mechanic's liens, judgments, special assessments, zoning changes, or changes that could affect your property? Yes ____ No ____

11. Is the property currently occupied by the owner? Yes ____ No ____

12. Does the property currently receive the owner occupied tax reduction pursuant to SDCL 32-3-1? Yes ____ No ____

13. Is the property currently part of a property tax freeze for any reason? Yes ____ No ____ Unknown ____

14. Is the property leased? Yes ____ No ____

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15. If leased, does the property use comply with local zoning laws? Yes ____ No ____
16. Does this property or any portion of this property receive rent? Yes ____ No ____
If yes, how much \$ ____ and how often ____?
17. Do you pay any mandatory fees or special assessments to a homeowners' or condominium association?
Yes ____ No ____
If yes, what are the fees or assessments? \$ ____ per ____ (i.e. annually, semi-annually, monthly)
Payable to whom: _____ For what purpose?

18. Are you aware if the property has ever had standing water in either the front, rear, or side yard more than forty-eight hours after heavy rain? Yes ____ No ____
19. Is the property located in or near a flood plain? Yes ____ No ____ Unknown ____
20. Are wetlands located upon any part of the property? Yes ____ No ____ Unknown ____

II. STRUCTURAL INFORMATION

If the answer is yes to any of the following, please explain under additional comments or on an attached separate sheet.

1. Are you aware of any water penetration problems in the walls, windows, doors, basement, or crawl space? Yes ____ No ____
2. What water damage related repairs, if any, have been made? _____
If any, when? _____

3. Are you aware if drain tile is installed on the property? Yes ____ No ____
4. Are you aware of any interior cracked walls or floors, or cracks or defects in exterior driveways, sidewalks, patios, or other hard surface areas? Yes ____ No ____
What related repairs, if any, have been made?

5. Are you aware of any roof leakage, past or present? Yes ____ No ____
Type of roof covering: _____ Age: _____
What roof repairs, if any, have been made, when and by whom? _____

Describe any existing unrepaired damage to the roof: _____

6. Are you aware of insulation in: the ceiling/attic? Yes ____ No ____
the walls? Yes ____ No ____ the floors? Yes ____ No ____

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7. Are you aware of any pest infestation or damage, either past or present? Yes ____ No ____
8. Are you aware of the property having been treated for any pest infestation or damage?
Yes ____ No ____ If yes, who treated it and when? _____
-
9. Are you aware of any work upon the property which required a building, plumbing, electrical, or any other permit? Yes ____ No ____ If yes, describe the work: _____
-
- Was a permit obtained? Yes ____ No ____
- Was the work approved by an inspector? Yes ____ No ____
10. Are you aware of any past or present damage to the property (i.e. fire, smoke, wind, floods, hail, or snow)? Yes ____ No ____ If yes, describe _____
-
- Have any insurance claims been made? Yes ____ No ____ Unknown ____
- Was an insurance payment received? Yes ____ No ____ Unknown ____
- Has the damage been repaired? Yes ____ No ____ If yes, describe in detail: _____
-
11. Are you aware of any problems with sewer blockage or backup, past or present?
Yes ____ No ____
12. Are you aware of any drainage, leakage, or runoff from any sewer, septic tank, storage tank, or drain on the property into any adjoining lake, stream, or waterway? Yes ____ No ____ If yes, describe in detail: _____
-

III. SYSTEMS/UTILITIES INFORMATION

	None/Not Included	Working	Not Working
1. 220 Volt Service	_____	_____	_____
2. Air Exchanger	_____	_____	_____
3. Air Purifier	_____	_____	_____
4. Attic Fan	_____	_____	_____
5. Burglar Alarm & Security System	_____	_____	_____
6. Ceiling Fan	_____	_____	_____
7. Central Air – Electric	_____	_____	_____
8. Central Air – Water Cooled	_____	_____	_____
9. Cistern	_____	_____	_____
10. Dishwasher	_____	_____	_____
11. Disposal	_____	_____	_____
12. Doorbell	_____	_____	_____
13. Fireplace	_____	_____	_____
14. Fireplace Insert	_____	_____	_____
15. Garage Door/Opener Control(s)	_____	_____	_____
16. Garage Wiring	_____	_____	_____
17. Heating System	_____	_____	_____

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18. Hot Tub, Whirlpool, and Controls	_____	_____	_____
19. Humidifier	_____	_____	_____
20. Intercom	_____	_____	_____
21. Light Fixtures	_____	_____	_____
22. Microwave/Hood	_____	_____	_____
23. Plumbing and Fixtures	_____	_____	_____
24. Pool and Equipment	_____	_____	_____
25. Propane Tank	_____	_____	_____
26. Radon System	_____	_____	_____
27. Sauna	_____	_____	_____
28. Septic/Leaching Field	_____	_____	_____
29. Sewer Systems/Drains	_____	_____	_____
30. Smoke/Fire Alarm	_____	_____	_____
31. Solar House – Heating	_____	_____	_____
32. Sump Pump(s)	_____	_____	_____
33. Switches and Outlets	_____	_____	_____
34. Underground Sprinkler and Heads	_____	_____	_____
35. Vent Fan	_____	_____	_____
36. Water Heater – Electric or Gas	_____	_____	_____
37. Water Purifier	_____	_____	_____
38. Water Softener – Leased or Owned	_____	_____	_____
39. Well and Pump	_____	_____	_____
40. Wood Burning Stove	_____	_____	_____

IV. HAZARDOUS CONDITIONS

Are you aware of any existing hazardous conditions of the property and are you aware of any tests having been performed?

	Existing Conditions		Tests Performed	
	Yes	No	Yes	No
1. Methane Gas	_____	_____	_____	_____
2. Lead Paint	_____	_____	_____	_____
3. Radon Gas (House)	_____	_____	_____	_____
4. Radon Gas (Well)	_____	_____	_____	_____
5. Radioactive Materials	_____	_____	_____	_____
6. Landfill, Mineshaft	_____	_____	_____	_____
7. Expansive Soil	_____	_____	_____	_____
8. Mold	_____	_____	_____	_____
9. Toxic Materials	_____	_____	_____	_____
10. Urea Formaldehyde Foam Insulations	_____	_____	_____	_____
11. Asbestos Insulation	_____	_____	_____	_____
12. Buried Fuel Tanks	_____	_____	_____	_____
13. Chemical Storage Tanks	_____	_____	_____	_____
14. Fire Retardant Treated Plywood	_____	_____	_____	_____
15. Production of Methamphetamines	_____	_____	_____	_____

If the answer is yes to any of the questions above, please explain in additional comments or on an attached separate sheet.

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V. MISCELLANEOUS INFORMATION

1. Is the street or road located at the end of the driveway to the property public or private?
Public ____ Private ____
2. Is there a written road maintenance agreement? Yes ____ No ____
If yes, attach a copy of the maintenance agreement.
3. When was the fireplace/wood stove/chimney flue last cleaned? _____
4. Within the previous twelve months prior to signing this document, are you aware of any of the following occurring on the subject property?
 - a. A human death by homicide or suicide? Yes ____ No ____
If yes, explain: _____
 - b. Other felony committed against the property or a person on the property? Yes ____ No ____
If yes, explain: _____
5. Is the water source (select one) ____ public or ____ private?
6. If private, what is the date and result of the last water test? _____
7. Is the sewer system (select one) ____ public or ____ private?
8. If private, what is the date of the last time the septic tank was pumped? _____
9. Are there broken window panes or seals? Yes ____ No ____
If yes, specify: _____
10. Are there any items attached to the property that will not be left, such as: towel bars, mirrors, swag lamps and hooks, curtain rods, window coverings, light fixtures, clothes lines, swing sets, storage sheds, ceiling fans, basketball hoops, mail boxes, etc. Yes ____ No ____
If yes, please list _____
11. Are you aware of any other material facts or problems that have not been disclosed on this form?
Yes ____ No ____ If yes, explain:

VI. ADDITIONAL COMMENTS (ATTACH ADDITIONAL PAGES IF NECESSARY)

CLOSING SECTION

The Seller hereby certifies that the information contained herein is true and correct to the best of the Seller's information, knowledge, and belief as of the date of the Seller's signature below. If any of

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these conditions change before conveyance of title to this property, the change will be disclosed in a written amendment to this disclosure statement.

_____ Seller	_____ Date	_____ Seller	_____ Date
-----------------	---------------	-----------------	---------------

THE SELLER AND THE BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO OBTAIN A TRUE REPORT AS TO THE CONDITION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN ANY CONTRACT OF SALE AS NEGOTIATED BETWEEN THE SELLER AND THE BUYER WITH RESPECT TO SUCH PROFESSIONAL ADVICE AND INSPECTIONS.

I/We acknowledge receipt of a copy of this statement on the date appearing beside my/our signature(s) below. Any agent representing any party to this transaction makes no representations and is not responsible for any conditions existing in the property.

_____ Buyer	_____ Date	_____ Buyer	_____ Date
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43-4-45. Disclosure of knowledge of existence of prior manufacturing of methamphetamines. Repealed by SL 2005, ch 230, § 2.

CHAPTER 26

ADMINISTRATIVE PROCEDURE AND RULES

Section

- 1-26-1. Definition of terms.
- 1-26-1.1. Interim Rules Review Committee created--Composition--Appointments--Terms of office--Vacancies.
- 1-26-1.2. Chair of rules review committee--Schedule of meetings--Compensation of members—Secretary.
- 1-26-1.3. Delegation of duties by director.
- 1-26-2. Agency materials available for public inspection--Derogatory materials.
- 1-26-2.1. Small business impact statements--Content.
- 1-26-2.2. Provisions of § 1-26-2.1 not applicable to Game, Fish and Parks Commission.
- 1-26-3. Repealed.
- 1-26-4. Notice, service, and hearing required for adoption of rules--Service on interim committee--Waiver of service.
- 1-26-4.1. Notice of hearing on proposed rule—Contents—Publication--Mailing.
- 1-26-4.2. Fiscal note submitted with proposed rule--Fiscal note of bureau--Transmitting copies.
- 1-26-4.3. Time limits for adoption of rules--Presentation to review committee.
- 1-26-4.4. Time for promulgation of rules after passage of legislative authority.
- 1-26-4.5. Validation of prior notices of hearings--Limitation on enforcement of vested rights affected.
- 1-26-4.6. Notices of intent to adopt emergency rules validated--Time for enforcing rights by reason of error in notice--Recordation of notice prerequisite to suit under § 1-26-4.1.
- 1-26-4.7. New or additional hearings on proposed rules.
- 1-26-4.8. Fee increase in proposed rule--Agency financial resource information--Submission to review committee.
- 1-26-5. Notice of proposed emergency rule--Service--Use of emergency rule adoption procedure.
- 1-26-5.1. Temporary suspension by emergency rule--Reversion of amended rule to original form.
- 1-26-5.2. Repealed.
- 1-26-6. Completion of adoption of rule or change in rules.
- 1-26-6.1. Restriction on incorporation of statutory material.
- 1-26-6.2. Uniform style for rules--Required contents.
- 1-26-6.3. Notice that rules do not conform--Redrafting and filing required.
- 1-26-6.4. Repealed.
- 1-26-6.5. Review by director--Notice to agency of need for change.
- 1-26-6.6. Incorporation by reference to generally available materials--Description--Reference note--Identification of agency and rule.
- 1-26-6.7. Procedure for amendment, suspension or repeal of rules.
- 1-26-6.8. Rules unenforceable until properly adopted.
- 1-26-6.9. Licensing board or commission fees--Criteria and limitation.
- 1-26-7. Records retained--Copies--Public inspection of current rules.
- 1-26-7.1. Agency's statement of reasons for adoption or rejection of rule.
- 1-26-8. Effective date of rules--Emergency rules.
- 1-26-8.1. Retroactive effect of acts prohibiting certain rules--Repealed or unconstitutional

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- statutes--Effect of transfer of rule-making authority to another agency.
- 1-26-8.2. Petition for delay in effective date of rule--Grant or denial--Maximum delay--Filings--One delay--Repeal of rule.
- 1-26-8.3. Retroactive effect of rule--Burden of proving authority or necessity.
- 1-26-9. Transferred.
- 1-26-10. Repealed.
- 1-26-11. Pamphlet publication of rules--Supervision.
- 1-26-12. Distribution and sale of publications and copies of rules.
- 1-26-12.1. List of rules and organizational statements.
- 1-26-13. Petition for rules--Denial or initiation of proceedings--Copies to Interim Rules Committee and director.
- 1-26-13.1. Service complete when deposited in mail.
- 1-26-14. Declaratory judgment on rules.
- 1-26-15. Declaratory rulings by agencies.
- 1-26-16. Notice and hearing required in contested cases.
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- 1-26-18. Rights of parties at hearings on contested cases--Summary disposition of certain cases.
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- 1-26-32.4. Form of transcript--Number of copies--Certification.
- 1-26-33. Record transmitted to circuit court--Limitation of record--Corrections and additions.
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- 1-26-33.3. Brief of appellant--Contents.
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- 1-26-33.5. Repealed.
- 1-26-33.6. Speedy hearing and determination.
- 1-26-34. Circuit court may order agency to take additional evidence.
- 1-26-35. Nonjury review in circuit court--Proof of irregularities--Oral argument discretionary.
- 1-26-36. Weight given to agency findings--Disposition of case--Grounds for reversal or modification--Findings and conclusions--Costs.
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- 1-26-37. Appeal to Supreme Court.
- 1-26-38. Suspension of provisional rules by interim committee--Hearing on suspension--Filing and duration of suspension.
- 1-26-38.1. Amendment as provisional--Subject to suspension--Effect.
- 1-26-39. Repealed.
- 1-26-40. Severability of provisions.
- 1-26-41. Citation of chapter.

1-26-1. Definition of terms. Terms used in this chapter mean:

- (1) "Agency," each association, authority, board, commission, committee, council, department, division, office, officer, task force, or other agent of the state vested with the authority to exercise any portion of the state's sovereignty. The term does not include the Legislature, the Unified Judicial System, any unit of local government, or any agency under the jurisdiction of such exempt departments and units unless the department, unit, or agency is specifically made subject to this chapter by statute;
- (2) "Contested case," a proceeding, including rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing but the term does not include the proceedings relating to rule making other than rate-making, proceedings related to inmate disciplinary matters as defined in § 1-15-20, or student academic or disciplinary proceedings under the jurisdiction of the Board of Regents or complaints brought by students attending institutions controlled by the Board of Regents about their residency classification under §§ 13-53-23 to 13-53-41, inclusive;

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- (3) "Emergency rule," a temporary rule that is adopted without a hearing or which becomes effective less than twenty days after filing with the secretary of state, or both;
- (4) "License," the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;
- (5) "Licensing," the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license;
- (6) "Party," each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;
- (7) "Person," all political subdivisions and agencies of the state;
- (8) "Rule," each agency statement of general applicability that implements, interprets, or prescribes law, policy, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:
 - (a) Statements concerning only the internal management of an agency and not affecting private rights or procedure available to the public;
 - (b) Declaratory rules issued pursuant to § 1-26-15;
 - (c) Official opinions issued by the attorney general pursuant to § 1-11-1;
 - (d) Executive orders issued by the Governor;
 - (e) Student matters under the jurisdiction of the Board of Regents;
 - (f) Actions of the railroad board pursuant to § 1-44-28;
 - (g) Inmate disciplinary matters as defined in § 1-15-20;
 - (h) Internal control procedures adopted by the Gaming Commission pursuant to § 42-7B-25.1;
 - (i) Policies governing specific state fair premiums, awards, entry, and exhibit requirements adopted by the State Fair Commission pursuant to § 1-21-10;
 - (j) Lending procedures and programs of the South Dakota Housing Development Authority; and
- (9) "Substantial evidence," such relevant and competent evidence as a reasonable mind might accept as being sufficiently adequate to support a conclusion.

1-26-1.1. Interim Rules Review Committee created -- Composition -- Appointments -- Terms of office -- Vacancies. There is hereby created a legislative committee of six members, no more than four of whom shall be of the same political party, which shall be designated the Interim

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Rules Review Committee. The committee shall be composed of three members of the Senate to be appointed by the president of the Senate and three members of the House of Representatives to be appointed by the speaker of the House of Representatives and no more than two senators and two representatives shall be of the same political party. Members shall be appointed prior to the adjournment of each regular session in odd-numbered years and shall serve for two-year terms ending at noon on the second Tuesday in January in each odd-numbered year; however, members shall serve until their successors are appointed. Vacancies on the committee shall be filled by the original appointing authority for the remainder of the term. A vacancy shall exist whenever a committee member ceases to be a member of the Legislature.

1-26-1.2. Chair of rules review committee -- Schedule of meetings -- Compensation of members -- Secretary. The interim rules review committee shall choose a chair from its members and prescribe its rules of procedure. Meetings of the committee shall be at the call of the chair or a majority of the committee.

On or before the first Monday following the last day of the legislative session, the committee and the agencies shall determine a schedule of dates for meetings to be held during the following twelve months. However, the committee is not required to hold a meeting if no proposed rules have been filed pursuant to subdivision 1-26-6(4) prior to the meeting.

The committee shall review all proposed agency rules and make recommendations to the agencies regarding rules and legislation authorizing rules and to the Legislature regarding administrative law. All meetings, regular or special, shall be open to the public and any interested person may be heard and present evidence.

Members of the committee shall be compensated for their attendance at meetings and for time spent in conduct of committee business at rates established by the Executive Board of the Legislative Research Council. The director of the Legislative Research Council, or one or more persons from the director's office, shall act as secretary to the committee, or the committee may employ a secretary.

1-26-1.3. Delegation of duties by director. The director may delegate the duties imposed by this chapter to other persons in the Legislative Research Council's office. Each person to whom the duties are delegated has the same power and authority as the director for the purposes of this chapter. The papers specifying the delegation of duties shall be filed with the secretary of state.

1-26-2. Agency materials available for public inspection -- Derogatory materials. Each agency shall make available for public inspection all rules, final orders, decisions, opinions, intra-agency memoranda, together with all other materials, written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions. An agency shall hold confidential materials derogatory to a person but such information shall be made available to the person to whom it relates.

1-26-2.1. Small business impact statements--Content. An agency shall, when submitting any proposed rule that will have a direct impact on small business, prepare an impact statement that includes the following:

- (1) A narrative explanation in plain, easy-to-read language of the effect of the rule on small business, the basis for its enactments, and why the rule is needed;
- (2) An identification and estimate of the number of small businesses subject to the proposed rule;

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- (3) The projected reporting and recordkeeping required for compliance with the proposed rule, including the types of professional skills necessary for preparation of the report or record;
- (4) A statement of the probable effect on impacted small business; and
- (5) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

An agency is only required to use readily available information and existing resources to prepare the impact statement.

1-26-2.2. Provisions of § 1-26-2.1 not applicable to Game, Fish and Parks Commission.

The provisions of § 1-26-2.1 do not apply to the Game, Fish and Parks Commission.

1-26-3. Rules, orders and decisions invalid unless available to public. Repealed by SL 1972, ch 8, § 36.

1-26-4. Notice, service, and hearing required for adoption of rules--Service on interim committee--Waiver of service. The following notice, service, and public hearing procedure shall be used to adopt, amend, or repeal a permanent rule:

- (1) An agency shall serve a copy of a proposed rule and any publication described in § 1-26-6.6 upon the departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer to which it is attached for the secretary's, commissioner's, or officer's written approval to proceed;
- (2) After receiving the written approval of the secretary, commissioner, or officer to proceed, the agency shall serve the director with a copy of: the proposed rules; any publication described in § 1-26-6.6; the fiscal note described in § 1-26-4.2; the impact statement on small business described in § 1-26-2.1; and the notice of hearing required by § 1-26-4.1. The copy of these documents shall be served at least twenty days before the public hearing to adopt the proposed rules. Any publication described in § 1-26-6.6 shall be returned to the agency upon completion of the director's review and retained by the agency. Also, twenty days before the public hearing, the agency shall serve the commissioner of the Bureau of Finance and Management with a copy of: the proposed rules; the fiscal note described in § 1-26-4.2; the impact statement on small business described in § 1-26-2.1; and the notice of hearing required by § 1-26-4.1;
- (3) The agency shall publish the notice of hearing in the manner prescribed by § 1-26-4.1, at least twenty days before the public hearing;
- (4) After reviewing the proposed rule pursuant to § 1-26-6.5, the director shall advise the agency of any recommended corrections to the proposed rule. If the agency does not concur with any recommendation of the director, the agency may appeal the recommended correction to the Interim Rules Review Committee for appropriate action;

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- (5) The agency shall afford all interested persons reasonable opportunity to submit amendments, data, opinions, or arguments at a public hearing held to adopt the rule. The hearing may be continued from time to time. The agency shall keep minutes of the hearing. A majority of the members of any board or commission authorized to pass rules must be present during the course of the public hearing;
- (6) If the agency is headed by a secretary, commissioner, or officer, the agency shall accept written comments regarding the proposed rule for a period of ten days after the public hearing. If the agency promulgating the rule is a part-time citizen board, commission, committee, or task force, the record of written comments shall be closed at the conclusion of the public hearing. However, the hearing may be specifically continued for the purpose of taking additional comments;
- (7) After the written comment period, the agency shall fully consider all amendments, data, opinions, or arguments regarding the proposed rule. A proposed rule may be modified or amended at this time to include or exclude matters which were described in the notice of hearing; and
- (8) The agency shall serve the minutes of the hearing, a complete record of written comments, the impact statement on small business, the fiscal note, the information required in § 1-26- 4.8, and a corrected copy of the rules on the members of the Interim Rules Review Committee at least five days before the agency appears before the committee to present the rules.

The time periods specified in this section may be extended by the agency. The requirement to serve the committee in subdivision (8) may be waived by the committee chair if the agency presents sufficient reasons to the committee chair that the agency is unable to comply with the time limit. The waiver may not be granted solely for the convenience of the agency.

1-26-4.1. Notice of hearing on proposed rule – Contents – Publication -- Mailing. The notice of a public hearing of an agency's intent to adopt, amend, or repeal a rule shall be published in a manner selected to notify persons likely to be affected by the proposed rule. At a minimum the notice of the public hearing shall be published in at least three newspapers of general circulation in different parts of the state. The provisions of chapter 17-2 do not apply to notices required by this section.

The notice of a public hearing or the notice of intent to adopt an emergency rule shall be mailed to each person who has made a timely request of the agency for advance notice of its rule-making proceedings.

A notice of hearing or a notice of intent to adopt emergency rules shall contain a narrative description of the effect of the proposed rule and the reasons for adopting the proposed rule. A notice of hearing shall also state where and when the hearing will be held, how amendments, data, opinions, and arguments may be presented, and how the public may obtain copies of the proposed rule.

1-26-4.2. Fiscal note submitted with proposed rule -- Fiscal note of bureau -- Transmitting copies. An agency shall, when submitting any proposed rule except an emergency

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rule, include a fiscal note. The fiscal note shall state what effect, if any, the proposed rule will have on the revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions. The fiscal note shall include an explanation of how such effect, if any, was computed.

The Bureau of Finance and Management shall prepare its own fiscal note and serve it on the agency, the director and the cochairmen of the Joint Appropriations Committee prior to hearing. If a proposed rule has a negative fiscal impact on a political subdivision, the agency shall direct the bureau to transmit a copy of the bureau's fiscal note to the South Dakota Municipal League, the Associated School Boards of South Dakota, and the South Dakota County Commissioners Association, prior to the hearing.

1-26-4.3. Time limits for adoption of rules -- Presentation to review committee. No permanent rule may be adopted if more than seventy-five days have passed from the date the public hearing on the rule commenced. The agency shall appear before the Interim Rules Review Committee and present the proposed permanent rule to the committee within the seventy-five day period before the rule is filed with the secretary of state. If the Interim Rules Review Committee fails to meet on the proposed permanent rule during the seventy-five-day period, and if the agency has complied with subdivisions 1-26-6(1) to 1-26-6(4), inclusive, the agency may complete the rules adoption process by complying with subdivision 1-26-6(5) notwithstanding subdivision 1-26-6(6). No emergency rule may be adopted if more than thirty days have passed from the date the notice of intent to adopt an emergency rule was published in the manner prescribed in § 1-26-4.1.

1-26-4.4. Time for promulgation of rules after passage of legislative authority. If an act of the Legislature, which becomes effective on the date set by § 2-14-16, contains an authorization for an agency to promulgate rules, the agency may perform the acts specified in § 1-26-4 or 1-26-5 any time after the Governor has signed the act containing the authorization to promulgate rules. However, the rules do not become effective until the act authorizing the agency to promulgate rules is effective.

1-26-4.5. Validation of prior notices of hearings -- Limitation on enforcement of vested rights affected. All notices of hearings on the adoption of rules made prior to July 1, 1984, are hereby in all respects legalized and validated. If a person has a vested right in any real or personal property by reason of an error in a notice or an error in the method of giving a notice referred to in this section, and if no action or proceeding to enforce such right was commenced prior to July 1, 1985, such right shall be forever barred. An action or proceeding involving real property may not be brought or maintained in a court of this state unless a notice of such action, made in accordance with chapter 15-10, was recorded in the office of the register of deeds of the county in which the affected real property is located prior to July 1, 1985.

1-26-4.6. Notices of intent to adopt emergency rules validated -- Time for enforcing rights by reason of error in notice -- Recordation of notice prerequisite to suit under § 1-26-4.1. All notices of intent to adopt emergency rules made prior to March 14, 1985, are hereby in all respects legalized and validated. If a person has a vested right in any real or personal property by reason of an error in a notice or an error in the method of giving a notice referred to in subdivision 1-26-4(2), and if no action or proceeding to enforce such right was commenced prior to July 1, 1986, such right is forever barred.

An action or proceeding brought pursuant to § 1-26-4.1 involving real property may not be brought or maintained in a court of this state unless a notice of such action, made in accordance with

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chapter 15-10, was recorded in the office of the register of deeds of the county in which the affected real property is located prior to July 1, 1987.

1-26-4.7. New or additional hearings on proposed rules. The Interim Rules Review Committee may require an agency to revert to any step in the adoption procedure provided in § 1-26-4. The Interim Rules Review Committee may require an agency to hold public hearings in addition to those provided for in § 1-26-4 if, in the judgment of the committee:

- (1) The substance of the proposed rule has been significantly rewritten from the originally proposed rule which was not the result of testimony received from the public hearing;
- (2) The proposed rule needs to be significantly rewritten in order to accomplish the intent of the agency;
- (3) The proposed rule needs to be rewritten to address the recommendations or objections of the Interim Rules Review Committee;
- (4) The proposed rule is not a valid exercise of delegated legislative authority;
- (5) The proposed rule is not in proper form;
- (6) The notice given prior to the proposed rule's adoption was not sufficient to give adequate notice to persons likely to be affected by the proposed rule;
- (7) The proposed rule is not consistent with the expressed legislative intent pertaining to the specific provision of law which the proposed rule implements; or
- (8) The proposed rule is not a reasonable implementation of the law as it affects the convenience of the general public or persons likely affected by the proposed rule.

If the committee requires an agency to revert to any step in the adoption procedure pursuant to this section, the time limitations set by chapter 1-26 shall also revert to the same step.

1-26-4.8. Fee increase in proposed rule--Agency financial resource information--Submission to review committee. If an agency proposes a rule to increase a fee, the agency shall provide information to the Interim Rules Review Committee about the financial resources available to the agency. This information consists of the agency's beginning fund balance, receipts, disbursements, ending fund balance for each of the last two fiscal years and consists of the agency's beginning fund balance, projected receipts, projected disbursements, and ending balance for the current fiscal year and the next fiscal year.

1-26-5. Notice of adoption of emergency rule. Notice of proposed emergency rule--Service--Use of emergency rule adoption procedure. Prior to the adoption or amendment of an emergency rule, an agency shall publish a notice of intent to adopt an emergency rule in the manner prescribed in § 1-26-4.1 and shall serve on the person specified by subdivision 1-26-4(1), each member of the Interim Rules Review Committee, and the director:

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- (1) A copy of the proposed rule, which shall bear a special number to distinguish it from a permanent rule;
- (2) Any publication described in § 1-26-6.6 which shall be returned to the agency upon completion of the director's review and retained by the agency; and
- (3) A statement, with the reasons, that the emergency procedure is necessary: because of imminent peril to the public health, safety, or welfare; to prevent substantial unforeseen financial loss to state government; or because of the occurrence of an unforeseen event at a time when the adoption of a rule in response to such event by the emergency procedure is required to secure or protect the best interests of the state or its residents.

Any agency may use the emergency rule adoption procedure. However, no agency may use the emergency rule adoption procedure for the convenience of the agency merely to avoid the consequences for failing to timely promulgate rules.

1-26-5.1. Temporary suspension by emergency rule -- Reversion of amended rule to original form. A rule may be temporarily suspended, but not repealed, by the adoption of an emergency rule. A rule amended by an emergency rule will revert to its original form ninety days after it has been in effect or at an earlier date if so specified in the rule, unless further amended within that period.

1-26-5.2. Required content of notices. Repealed by SL 1979, ch 8, § 2.

1-26-6. Completion of adoption of rule or change in rules. The adoption, amendment, or repeal of a rule is complete when:

- (1) All the requirements of § 1-26-4 have been completed or, if the rule is an emergency rule, three days have passed since all the requirements of § 1-26-5 have been complied with;
- (2) It has been signed by a majority of the members of the multi-member body or by the officer having the authority to adopt it;
- (3) It has been signed by the director;
- (4) A copy has been filed with the director, in a form prescribed by the director to show amendments, deletions, and other changes to existing rules, for use in preparation of copy for the Administrative Rules of South Dakota;
- (5) The rule and a certificate have been filed with the secretary of state. The certificate shall affirm that the rule filed is a true and correct copy of the rule as adopted and that the agency has complied with § 1-26-4 or 1-26-5, and with this section; and
- (6) For a permanent rule, the agency has appeared and presented the proposed rule to the Interim Rules Review Committee.

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Certificates required by this section shall be affidavits executed, under oath, by the officers authorized by statute to promulgate the rule. If a rule is promulgated by a multi-member body, the certificate shall be signed by its presiding officer.

Emergency rules are provisionally effective immediately after being filed. Notwithstanding § 15- 6-6(a), all other rules are provisionally effective on the twentieth day after being filed, not counting the day of filing. In either case a later effective date may be specified as part of the rules being filed. A rule which is not yet effective or a provisionally effective rule may be suspended in the manner specified by § 1-26-38 any time prior to the first day of July of the year following the year in which it became, or would have become, effective. The rule's provisional status ends at that time, and the rule may not thereafter be suspended by the rules committee. Unless suspended, a provisionally effective rule shall be enforced by the agency and the courts as if it were not so conditioned.

No rule promulgated after June 30, 1975, is valid unless adopted in compliance with § 1-26-4 or 1-26-5, and this section and copies of the rule are made available to the public upon request, by the agency.

1-26-6.1. Restriction on incorporation of statutory material. An agency may refer to statute but may not incorporate statutory provisions, other than definitions, in their rules nor publish or distribute statutory material in conjunction with their rules unless required by law or expressly authorized by the Code Commission pursuant to § 2-16-8.1.

1-26-6.2. Uniform style for rules -- Required contents. The director shall prescribe a uniform style in which rules shall be prepared and the standard form to be used in filing rules pursuant to this chapter. Such form shall contain a provision for a reference to be made by the agency for each rule proposed by it, citing its general authority to promulgate rules and then refer to the section, subdivision, or subsection of statute which the rule is intended to implement, and direct the agency to identify prior rules amended or repealed.

1-26-6.3. Notice that rules do not conform -- Redrafting and filing required. The director may notify any agency whose rules are not in the proper style and form. A copy of this notice shall be filed with the secretary of state. One hundred eighty days after an agency receives such notification, the rules of that agency shall be of no further force and effect unless redrafted in the prescribed style and form and filed with the secretary of state and the director.

1-26-6.4. Submission of rules prior to adoption -- Effective date -- Signature and attestation. Repealed by SL 1975, ch 16, § 25.

1-26-6.5. Review by director -- Notice to agency of need for change. The director shall review each rule for compliance with the requirements for form, style, and clarity. The director shall review each rule for legality. The review for legality is a determination that the rule is authorized by the standards provided in the statutes cited by the agency to promulgate the rule. The director shall review the statement of reasons that the emergency procedure is necessary. If the director finds need for change, the director shall make the requirements known in writing to the agency prior to the hearing or within three days in the case of emergency rules.

1-26-6.6. Incorporation by reference to generally available materials -- Description -- Reference note -- Identification of agency and rule. An agency may adopt other comprehensive

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regulations as its own by making reference to them in a rule, but only when the comprehensive regulations are published by an organization which is not part of the state government and only when the publication is generally available to the public at a reasonable cost. A rule which incorporates material by reference shall describe the exact section or portion of the publication which is being incorporated. Immediately following a rule which incorporates published material by reference, other than material contained in the code of federal regulations, the federal register, the United States code or the United States statutes at large, the agency shall place a reference note which identifies the publication by its title, date of publication, or enactment and author, and which states where the publication may be obtained and its cost, if any. A statement shall be attached to the face of the publication which shall state the agency's name, the section number of the rule which incorporates the material within, and the date the rule was served pursuant to § 1-26-4 or 1-26-5 or filed pursuant to § 1-26-6.

1-26-6.7. Procedure for amendment, suspension or repeal of rules. Once a rule has been adopted, it may not be amended, repealed, or suspended except by compliance with § 1-26-4 or 1-26-5, and with § 1-26-6, even if it has not taken effect.

1-26-6.8. Rules unenforceable until properly adopted. No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter.

1-26-6.9. Licensing board or commission fees -- Criteria and limitation. If a professional or occupational licensing board or commission is authorized in statute to establish fees by rule and no maximum fee limit is specified, the fees shall be reasonable and necessary to provide enough money to meet the budgetary needs of the licensing board or commission for such things as: per diem, travel expenses, office expense, salaries and benefits, utilities, supplies, testing, licensing, inspections, disciplinary actions, and legal fees. However, the total amount of increase in the fees imposed by a licensing board or commission may not exceed the previous year's budget by more than twenty percent.

1-26-7. Records retained -- Copies -- Public inspection of current rules. Each agency shall keep the original records, documents, and instruments required by this chapter and shall make copies of all records, documents, and exhibits available to members of the Legislature upon request. The secretary of state shall keep a copy of the agency's current rules and the certificates pertaining thereto, which shall be open to public inspection.

1-26-7.1. Agency's statement of reasons for adoption or rejection of rule. Upon adoption of a rule or upon the rejection of a petition filed pursuant to § 1-26-13, an agency, if requested to do so in writing by an interested person either prior to adoption or rejection or within thirty days thereafter, shall issue a written concise statement of the principal reasons for and against the rule's adoption, incorporating therein its reasons for overruling the considerations urged against the rule's adoption or rejection. A copy of the statement shall be served on the members of the Interim Rules Review Committee and the director of the Legislative Research Council.

1-26-8. Effective date of rules -- Emergency rules. Each rule is effective twenty days after filing with the secretary of state, except that:

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- (1) If a later date is required by statute or specified in the rule, the later date is the effective date;
- (2) Subject to applicable constitutional or statutory provisions, an emergency rule is effective immediately upon filing with the secretary of state, or at a stated date less than twenty days later. No emergency rule may remain in effect for a period of longer than ninety days.

1-26-8.1. Retroactive effect of acts prohibiting certain rules -- Repealed or unconstitutional statutes -- Effect of transfer of rule-making authority to another agency. If an act is passed by the Legislature which prohibits an agency from passing rules relating to a certain subject, any prior rule promulgated by that agency relating to that subject shall become void on the effective date of the act.

If a statute which authorizes an agency to pass a rule is repealed, or declared unconstitutional by the South Dakota or United States Supreme Court, any rule which was authorized by that statute is void unless there is another valid statute which also authorized the agency to pass that rule. If an agency's authority to adopt rules is transferred to another agency, and no provision is specified for the disposition of the first agency's rules in the legislation or executive order which made the transfer, the rules of the first agency shall be the rules of the second agency until they are amended or repealed.

1-26-8.2. Petition for delay in effective date of rule -- Grant or denial -- Maximum delay -- Filings -- One delay -- Repeal of rule. After a rule has been adopted and filed with the secretary of state, any person may petition the agency which adopted the rule to delay the effective date of the rule. The petition must be filed with the agency at least ten days prior to the effective date of the rule. The agency must grant or deny the petition, with or without a hearing, within ten days of filing. If the petition is granted, the effective date of the rule may not be delayed more than ninety days. A copy of the petition and a statement of the agency justifying the granting of the petition shall be sent to the chairman of the Interim Rules Review Committee at the time the decision is made. A copy of the statement granting the petition shall be filed with the secretary of state at the time the decision is made.

The effective date of a rule may be delayed only once, and an agency may repeal the rule during the period of the delay.

1-26-8.3. Retroactive effect of rule -- Burden of proving authority or necessity. If any rule is proposed to have retroactive effect, the burden is on the agency to show that the retroactivity is authorized by law or is necessary to implement new provisions of law.

1-26-9. Transferred to § 1-26A-1.

1-26-10. Monthly bulletin publishing rules. Repealed by SL 1972, ch 8, § 36.

1-26-11. Pamphlet publication of rules -- Supervision. Each agency promulgating professional or regulatory examining and licensing rules or other rules under this chapter may cause the same, or any portion thereof, to be published in pamphlet form, subject to the supervision of the director regarding style and form and such other limitations of certification.

1-26-12. Distribution and sale of publications and copies of rules. Publications and copies of rules authorized under or required by this chapter shall upon request be made available to agencies and officials of this state free of charge and to other persons at prices fixed by the Interim Rules

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Review Committee to cover mailing and publication costs. An agency may not charge the public for copies of notices or intentions to pass rules required by § 1-26-4.1. The provisions of § 1-8-10 except as to certification do not apply to copies of publications distributed by the secretary of state under this chapter.

1-26-12.1. List of rules and organizational statements. To assist interested persons dealing with it, each agency which has adopted rules shall make available, either electronically or through paper copy, a list of the agency's rules and a descriptive statement of its central and field organization. This information includes the locations of persons and places from which the public can secure information, make submittals or requests, or obtain decisions.

1-26-13. Petition for rules -- Denial or initiation of proceedings -- Copies to Interim Rules Committee and director. An interested person, other than an inmate as defined in § 1-15-20.1, may petition an agency requesting the promulgation, amendment, or repeal of a rule. The petition shall contain the text or substance of any new rule or amendment sought, the identification of any rule sought to be repealed, reasons for the proposal, and the name and address of the petitioner. Within thirty days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denials) or shall initiate rule-making proceedings in accordance with § 1-26-4. The agency shall serve a copy of any petitions and denials on the members of the Interim Rules Review Committee and the director of the Legislative Research Council.

1-26-13.1. Service complete when deposited in mail. Notwithstanding § 15-6-6(e), any service required by §§ 1-26-1 to 1-26-13, inclusive, shall, when performed by mail, be complete when the material to be served is deposited with the United States postal service.

1-26-14. Declaratory judgment on rules. The validity or applicability of a rule may be determined in an action for declaratory judgment in the circuit court for the county of the plaintiff's residence, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

1-26-15. Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. No inmate as defined in § 1-15-20.1 may petition an agency for a declaratory ruling on the applicability of statutory provisions, rules, or orders of the agency. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases. A copy of all such rulings shall be filed with the director for publication in the Administrative Rules of South Dakota.

1-26-16. Notice and hearing required in contested cases. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

1-26-16.1. Informal meeting with parties prior to contested case proceedings. Repealed by SL 1983, ch 7.

1-26-17. Contents of notice in contested cases. The notice shall include:

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- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved;
- (4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished;
- (5) A statement of any action authorized by law, which may affect the parties, as a result of any decision made at the hearing, whether it be the revocation of a license, the assessment of a fine or other effect;
- (6) A statement that the hearing is an adversary proceeding and that a party has the right at the hearing, to be present, to be represented by a lawyer, and that these and other due process rights will be forfeited if they are not exercised at the hearing;
- (7) Except in contested cases before the Public Utilities Commission, a statement that if the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17;
- (8) A statement that the decision based on the hearing may be appealed to the circuit court and the State Supreme Court as provided by law.

1-26-17.1. Intervention in contested case by person with pecuniary interests. A person who is not an original party to a contested case and whose pecuniary interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made.

1-26-18. Rights of parties at hearings on contested cases -- Summary disposition of certain cases. Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. However, each agency, upon the motion of any party, may dispose of any defense or claim:

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or
- (2) At the close of the evidence offered by the proponent of the defense or claim if it determines that the evidence offered by the proponent of the defense or claim is legally insufficient to sustain the defense or claim.

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A party to a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of the party's interest, and may have subpoenas issued to compel attendance of witnesses and production of evidence in the party's behalf.

1-26-18.1. Trial of contested case by an administrative law judge. Repealed by SL 1995, ch 8, § 14.

1-26-18.2. Trial of contested case by hearing examiner -- Appeal. Repealed by SL 1995, ch 8, § 15.

1-26-18.3. Request to use Office of Hearing Examiners in certain contested cases. In any contested case, if the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17.

1-26-19. Rules of evidence in contested cases. In contested cases:

- (1) Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not otherwise admissible thereunder may be admitted except where precluded by statute if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;
- (2) A party may conduct cross-examinations required for a full and true disclosure of the facts;
- (3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

1-26-19.1. Administration of oaths -- Subpoena powers -- Witness fees -- Disobedience of subpoena. Each agency and the officers thereof charged with the duty to administer the laws of this state and rules of the agency shall have power to administer oaths as provided by chapter 18-3 and to subpoena witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters in contested cases and likewise issue subpoenas for such purposes

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for persons interested therein as provided by § 15-6-45. Unless otherwise provided by law fees for witnesses shall be as set forth in chapter 19-5 and be paid by the agency or party for whom the witness is subpoenaed.

Failure of a person to obey the subpoena issued pursuant to this chapter may be punished as a contempt of court in the manner provided by chapter 21-34.

1-26-19.2. Depositions of witnesses. Each agency and the officers thereof charged with the duty to administer the laws and rules of the agency shall have power to cause the deposition of witnesses residing within or without the state or absent therefrom to be taken or other discovery procedure to be conducted upon notice to the interested person, if any, in like manner that depositions of witnesses are taken or other discovery procedure is to be conducted in civil actions pending in circuit court in any matter concerning contested cases.

1-26-20. Agreed disposition of contested cases. Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

1-26-21. Contents of record in contested cases. The record in a contested case shall include:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received and considered;
- (3) A statement of matters officially noticed which have been refuted;
- (4) Questions and offers of proof, objections, and rulings thereon;
- (5) Proposed findings and exceptions;
- (6) Any decision, opinion, or report by the officer presiding at the hearing;
- (7) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

1-26-22. Transcript in contested cases -- Minutes in lieu of transcript. Whenever a party requests in writing that oral proceedings be transcribed, a verbatim record of all proceedings and testimony shall be kept by the agency. Unless otherwise provided by law the agency shall not be required to transcribe the record unless the requesting party tenders and pays the reasonable cost thereof. If transcribed, a copy of the record shall be furnished to any other party to the hearing at the request and expense of such other party. If no verbatim record is transcribed, the agency shall prepare minutes of the hearing. The minutes shall consist of a written summary of the evidence and proceedings.

1-26-23. Basis for findings in contested cases. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

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1-26-24. Tentative or proposed decision served on parties -- Contents -- Waiver. When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a tentative or proposed decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The tentative or proposed decision shall contain a statement of the reasons therefor and findings of fact on each issue and conclusions of law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

1-26-25. Form, contents and notice of decisions, orders and findings. A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. It may affirm, modify, or nullify action previously taken or may direct the taking of new action within the scope of the notice of hearing. It shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

1-26-26. Ex parte consultations by agency personnel -- Investigating officer disqualified from decision on hearing -- Authorized communications. Unless required for the disposition of ex parte matters authorized by law, members of the governing board or officers or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. If one or more members of a board or commission or a member or employee of an agency, who is assigned to render a decision in a contested case, took part in an investigation upon which the contested case is based, he shall not participate in the conduct of the hearing nor take part in rendering the decision thereon, but he may appear as a witness and give advice as to procedure. If, because of such disqualification, there is no person assigned to conduct the hearing or render the decision, the agency shall appoint someone pursuant to § 1-26-18.1 to fulfill those duties. A person assigned to render a decision:

- (1) May communicate with other members of the agency, and
- (2) May have the aid and advice of one or more personal assistants.

1-26-27. License proceeding treated as contested case. When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, or an applicant, a party or an agency requests a hearing, the provisions of this chapter concerning contested cases apply.

1-26-28. Extension of existing license or right to continue activity extended during renewal or licensing proceedings and for ten days following notice of determination. If a licensee has made timely and sufficient application for renewal of a license or a new license with reference to any activity of a continuing nature, the existing license, or a right to continue the activity, does not expire until the application has been finally determined by the agency and for ten days following receipt, or failure to accept delivery, of notice of such determination by the licensee.

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1-26-29. Notice and hearing required for revocation or suspension of license --

Emergency suspension. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

1-26-29.1. Costs of disciplinary hearing. After conducting a contested case proceeding that results in discipline or censure of a licensee, suspension or revocation of a licensee's license, or denial of a license to an applicant, a professional or occupational board or commission established pursuant to Title 36 may assess all or part of its actual expenses for the proceeding against the licensee or applicant.

1-26-30. Right to judicial review of contested cases -- Preliminary agency actions. A person who has exhausted all administrative remedies available within any agency or a party who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. If a rehearing is authorized by law or administrative rule, failure to request a rehearing will not be considered a failure to exhaust all administrative remedies and will not prevent an otherwise final decision from becoming final for purposes of such judicial review. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, or relief, when provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

1-26-30.1. Right of appeal when agency fails to act in contested case. The failure of any agency to make and file a decision within a period of thirty days after any matter has been finally submitted to it, entitles a person authorized to appeal from the record then existing as if the decision had been made adversely to him in whole or in part, unless within such time the agency shall make and serve upon all the parties to the record, an order extending such time for an additional period of not to exceed sixty days, which order shall state the grounds or reasons why such extension is necessary. At the expiration of the thirty days or the time to which extended by such order, such person may present to the agency a proposed decision, and if the same is not adopted within five days after presentation for filing, such person may appeal the same as if such proposed decision had been denied. This section does not apply to contested cases determined by the Public Utilities Commission.

1-26-30.2. Appeal from final action in contested case. An appeal shall be allowed in the circuit court to any party in a contested case from a final decision, ruling, or action of an agency.

1-26-30.3. Conduct of appeals. Notwithstanding any other provision of law, all appeals authorized by § 1-26-30.1 or 1-26-30.2 shall be taken and conducted pursuant to the provisions of this chapter.

1-26-30.4. Scope of sections on appeals to circuit courts. The sections of this chapter on appeals to circuit courts shall govern civil appeals to the circuit courts of South Dakota from final decisions, rulings, or actions of agencies pursuant to chapter 1-26.

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1-26-30.5. Suspension of sections on appeals to circuit courts. In the interest of expediting decisions in cases of pressing concern to the public or to litigants, or for good cause shown, the circuit court may suspend the requirement or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

1-26-31. Notice of appeal -- Time for service and filing. An appeal shall be taken by serving a copy of a notice of appeal upon the adverse party, upon the agency, and upon the hearing examiner, if any, who rendered the decision, and by filing the original with proof of such service in the office of the clerk of courts of the county in which the venue of the appeal is set, within thirty days after the agency served notice of the final decision or, if a rehearing is authorized by law and is requested, within thirty days after notice has been served of the decision thereon. Failure to serve notice of the appeal upon the hearing examiner does not constitute a jurisdictional bar to the appeal.

1-26-31.1. Venue of appeal. The venue of the appeal is as follows:

- (1) If the appellant is a resident of this state, to the circuit court for the county of the appellant's residence or to the circuit court for Hughes County, as the appellant may elect;
- (2) If the appellant is a nonresident or a foreign corporation, to the circuit court for the county of appellant's principal place of business in South Dakota or to the circuit court for Hughes County as the appellant may elect; or
- (3) The parties may stipulate for venue in any county in the state, and the circuit court for such county shall thereupon hear the appeal.

Appeals from a single administrative action may not proceed in more than one county. If multiple appeals of a single action are filed in more than one county, the appeals shall be consolidated and heard in the county in which the appeal is first filed. If more than one appeal is first filed on the same date and a stipulation among the parties as to venue cannot be reached, the venue of the appeal is in the circuit court for Hughes County.

1-26-31.2. Contents of notice of appeal. The notice of appeal shall contain the names of the parties and the county to which the appeal is taken; it shall designate in plain and concise language the order or decision from which the appeal is taken; and it shall be dated and signed by the appellant or his attorney.

1-26-31.3. Change of venue. The circuit court to which the appeal is first taken may, upon good cause shown and upon such terms or provisions for expense as it may deem reasonable in favor of any party objecting, and on application and notice within thirty days after the appeal is taken, change the venue to the circuit court for any other county.

1-26-31.4. Contested cases -- Statement of issues on appeal. Within ten days after the filing of the notice of appeal as required by § 1-26-31, the appellant shall file with the clerk of the circuit court a statement of the issues the appellant intends to present on the appeal and shall serve on the other parties a copy of such statement. If any other party wishes to raise additional issues on appeal, the party shall file an additional statement of issues on appeal within ten days after service of the appellant's statement.

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1-26-32. When agency decision in contested case becomes effective -- Application for stay pending appeal -- Time -- Granting of further stay -- Security or other supervision -- Inapplicability to determinations of benefits under Title 61. Any agency decision in a contested case is effective ten days after the date of receipt or failure to accept delivery of the decision by the parties. An application to the circuit court for a stay of the agency's decision may be made only within ten days of the date of receipt or failure to accept delivery of the agency's decision. Upon receiving a timely application for a stay and notice of hearing thereon, the court may enter a temporary stay pending a hearing on the application. Following a hearing, the court may order a further stay, pending final decision of the court. The court, as a condition to granting a stay, may require the appellant to furnish a bond or other such security or order supervision as the court may direct to indemnify or protect the state or agency or any person from loss, damage, or costs which may occur during the stay. This section does not apply to determinations of benefits made by the Department of Labor pursuant to Title 61.

1-26-32.1. Procedural rules applied. The sections of Title 15 relating to practice and procedure in the circuit courts shall apply to procedure for taking and conducting appeals under this chapter so far as the same may be consistent and applicable, and unless a different provision is specifically made by this chapter or by the statute allowing such appeal.

1-26-32.2. Request for transcript -- Waiver by failure to request. Within ten days after the filing of the notice of appeal, the appellant shall order from the agency or reporter, if present, a written transcript of the proceedings or such parts thereof as he deems necessary of the contested case hearing. The order shall be in writing and a copy thereof shall be served on all parties to the action and a copy shall be filed with the clerk of the circuit court. Failure to order a transcript within the ten-day period shall constitute a waiver of the right to such a transcript.

If the appellee deems a transcript of other parts of the proceedings necessary, he shall, within ten days after the service of the appellant's request or statement of issues, file with the clerk of the circuit court and serve upon the appellant a request for a transcript of additional parts to be included in the transcript of the contested case hearing. Failure to order such additional parts of the transcript shall constitute a waiver of the right to such additional parts of the transcript.

1-26-32.3. Costs of transcript -- Endorsement of order by reporter -- Extension of time for transcript. At the time of ordering a transcript of the contested case hearing a party, other than an agency, must make satisfactory arrangements with the agency or reporter, if present, for the payment of the costs of the transcript and all necessary copies. The agency or reporter shall acknowledge at the foot of the order receipt of the request for the transcript and transmit the order to the clerk of the circuit court. If the transcript cannot be completed within thirty days, the agency or reporter shall request an extension of time from the circuit court judge assigned to the appeal and the action of the circuit court judge shall be entered on the record and the parties notified.

1-26-32.4. Form of transcript -- Number of copies -- Certification. The original transcript of the contested case hearing will be filed with the clerk of the circuit court and copies transmitted to the attorney for each party to the appeal separately represented and directly to any parties not represented. The agency will make duplicate copies of items specified in § 1-26-21 that are requested and shall transmit copies to the attorney for each party to the appeal separately represented and directly to any parties not represented. In the event that more than three copies of the transcript and other items as specified in § 1-26-21 are necessary to comply with the foregoing requirement, the appellant may make application, upon notice, to the circuit court for an order determining the

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number of copies to be served and the time of use by the parties. Copies of the transcript and items specified in § 1-26-21 may be reproduced by any duplicating or copying process which produces a clear black image on white paper, if a typewritten transcript is prepared. The reporter or agency shall certify the correctness of the original and all copies of the transcript. The agency or reporter shall notify the clerk of the circuit court in writing that the original transcript has been filed and copies transmitted.

1-26-33. Record transmitted to circuit court -- Limitation of record -- Corrections and additions. Within thirty days after the service of the notice of appeal, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

It shall be the duty of the agency to assemble and consecutively number the pages of all documents, papers, and exhibits filed with the agency, including any opinions and decisions which the agency may have filed or authorized for filing. The agency shall then prepare and attach an alphabetical and chronological index to the record and shall serve a copy of such index on all parties to the review proceedings at the time the record is submitted to the reviewing court.

1-26-33.1. Transferred to § 1-26-33.6.

1-26-33.2. Time for serving briefs. Unless otherwise ordered by the circuit court, the appellant shall serve a brief within thirty days after the delivery of the transcript of the contested case hearing to counsel for the parties or to the parties if unrepresented by counsel or within thirty days after the agency record is transmitted to the circuit court pursuant to § 1-26-33, whichever event occurs later. The appellee shall serve a brief within thirty days after the service of the brief of appellant, or in the case of multiple appellants, within thirty days after service of the last appellant's brief. The appellant may serve a reply brief within ten days after service of appellee's brief, or in the case of multiple appellees, within ten days after service of the last appellee's brief. Pursuant to § 15-6-5(d), briefs may not be made a part of the record.

1-26-33.3. Brief of appellant -- Contents. The brief of the appellant shall contain under appropriate headings in the order here indicated:

- (1) A jurisdictional statement setting forth the date and the form of the agency decision, ruling or action sought to be reviewed and the date when the notice of appeal was filed with the circuit court.
- (2) A concise statement of the legal issue or issues involved omitting unnecessary detail. Each issue shall be stated as an appellate court would state the broad issue presented. Each issue shall be followed by concise statement of how the agency decided it. Any issue not presented in the brief is deemed waived.
- (3) A statement of the case and facts. A statement of the case shall first be presented identifying the agency and indicating briefly the nature of the case and its disposition by the agency. There shall follow a statement of facts relevant to the grounds urged for reversal, modification or other relief.

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- (4) An argument. The argument shall contain the contentions of the party with respect to the issues presented, the reasons therefor, and the citations to the authorities relied on. Each issue shall be separately presented. Needless repetition shall be avoided.
- (5) A short conclusion stating the precise relief sought.
- (6) Appendix, if any. Such appendix may include the decision, ruling, or action in question and any regulations or any relevant parts to which the parties wish to direct the particular attention of the circuit court.
- (7) Request for oral argument, if desired.

1-26-33.4. Brief of appellee -- Contents. The brief of the appellee shall conform to the same requirements as the brief of the appellant, except that the jurisdictional statement, statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statements made by the appellant. If a notice of review is filed, the appellee's brief shall contain the issues specified in the notice of review and the argument thereon as well as the answer to the brief of the appellant.

1-26-33.5. Oral argument. Repealed by SL 1996, ch 158, § 44.

1-26-33.6. Speedy hearing and determination. Upon the filing of the record and other papers in the office of the clerk of the circuit court, it shall be the duty of such court when its attention is called to the matter by the parties, or one of them, immediately to fix a date for hearing, and said cause shall be speedily heard and determined.

1-26-34. Circuit court may order agency to take additional evidence. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

1-26-35. Nonjury review in circuit court -- Proof of irregularities -- Oral argument discretionary. The review shall be conducted by the court without a jury and shall be confined to the record. A trial de novo may not be granted unless otherwise authorized by law, but in cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, may hear oral argument.

1-26-36. Weight given to agency findings -- Disposition of case -- Grounds for reversal or modification -- Findings and conclusions -- Costs. The court shall give great weight to the findings made and inferences drawn by an agency on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;

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- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in light of the entire evidence in the record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

A court shall enter its own findings of fact and conclusions of law or may affirm the findings and conclusions entered by the agency as part of its judgment. The circuit court may award costs in the amount and manner specified in chapter 15-17.

1-26-36.1. Appellee's right to obtain review. An appellee may obtain review of a final decision, ruling, or action of any agency which may adversely affect him by filing a notice of review with the clerk of the circuit court within twenty days after service of the notice of appeal. The clerk of the circuit court shall not accept for filing such notice of review unless accompanied by proof of service of such notice on all other parties. The notice of review shall specify the decision, ruling, or action of the agency to be reviewed.

1-26-37. Appeal to Supreme Court. An aggrieved party or the agency may obtain a review of any final judgment of the circuit court under this chapter by appeal to the Supreme Court. The appeal shall be taken as in other civil cases. The Supreme Court shall give the same deference to the findings of fact, conclusions of law, and final judgment of the circuit court as it does to other appeals from the circuit court. Such appeal may not be considered de novo.

1-26-38. Suspension of provisional rules by interim committee -- Hearing on suspension -- Filing and duration of suspension. The Interim Rules Review Committee may, by an affirmative vote of not less than a majority of the members of the committee, suspend provisional rules or rules which have not become effective. To suspend a rule, the committee shall:

- (1) Give the agency which promulgated the rule at least two weeks notice of a hearing on the proposed suspension;
- (2) Hold a hearing, which may be in conjunction with a regular committee meeting. At the hearing, the burden of proof that the rule is necessary and does not violate any constitutional or statutory provision or the legislative intent when authority to promulgate the rule was given, is on the agency;
- (3) File an appropriate resolution of such action with the secretary of state.

The suspension is effective from the date of such filing. A suspended rule shall remain suspended until July first of the year following the year in which it became, or would have become, effective, and may not be enforced during that period.

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1-26-38.1. Amendment as provisional -- Subject to suspension -- Effect. If an agency amends an existing rule, the amendment becomes provisionally effective and subject to § 1-26-38. The effect of suspending a provisionally effective amendment is to return the rule to its form prior to the amendment.

1-26-39. Appeal procedure preserved. Repealed by SL 1972, ch 8, § 36.

1-26-40. Severability of provisions. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and for this purpose the provisions of this chapter are severable.

1-26-41. Citation of chapter. This chapter may be cited as the South Dakota Administrative Procedures Act.

ARTICLE 20:69
REAL ESTATE BROKERS AND SALESPERSONS

Chapter

20:69:01	Definitions.
20:69:02	General rules.
20:69:03	Licensing and licenses.
20:69:04	Prelicensing education.
20:69:05	Disciplinary proceedings.
20:69:06	Real estate auctioneer licenses.
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20:69:08	Mortgage brokers.
20:69:09	Real estate appraisers, Repealed.
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20:69:11	Postlicensing and continuing education.
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20:69:13	Time-share agents.
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CHAPTER 20:69:01

DEFINITIONS

Section

20:69:01:01	Definitions.
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20:69:01:01. Definitions. Words defined in SDCL chapter 36-21A have the same meaning when used in this article.

Source: SL 1975, ch 16, § 1; 3 SDR 34, effective November 3, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:01:01, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-89.

CHAPTER 20:69:02 GENERAL RULES

Section

20:69:02:01	Repealed.
20:69:02:02	Commission action.
20:69:02:03	Petition for declaratory ruling.
20:69:02:04	Commission action on petition.
20:69:02:05	Number of copies of petition for declaratory ruling--Electronic filing.
20:69:02:06	Number of copies of petition for promulgation of rule--Electronic filing.
20:69:02:07	Petition for contested case hearing.
20:69:02:08	Petition for review of decision on contested case.

20:69:02:01. Official office. Repealed.

Source: SL 1975, ch 16, § 1; 7 SDR 31, effective October 6, 1980; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:02:01, 20 SDR 18, effective August 16, 1993; repealed, 24 SDR 172, effective June 16, 1998.

20:69:02:02. Commission action. The commission may take any action by a mail ballot or by a conference telephone call. In case of a conference telephone call, the executive director shall participate in the call and take minutes of the commission action. In case of a mail ballot, the results of the mail ballot shall be included in the minutes. A mail ballot or conference telephone call is a meeting of the commission.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:02:03.01, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-21.

20:69:02:03. Petition for declaratory ruling. Any person wishing the commission to issue its ruling as to the applicability to that person of a statutory provision, rule, or order of the commission may file a petition with the commission in substantially the following form:

State of South Dakota South Dakota Real Estate Commission

Pursuant to the provisions of SDCL 1-26-15, I, (name of petitioner), of (address of petitioner), am (title or capacity of petitioner), and do hereby petition the South Dakota Real Estate Commission for its declaratory ruling in regard to the following:

1. The state statute or South Dakota Real Estate Commission rule or order in question is: (here identify and quote the pertinent statute, rule, or order);

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2. The facts and circumstances which give rise to the issue to be answered by the commission's declaratory ruling are:

3. The precise issue to be answered by the commission's declaratory ruling is:

Dated at (city and state), this _____ day of _____ 20__.

(Signature of petitioner)

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:07:01, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-15, 36-21A-89.

20:69:02:04. Commission action on petition. Upon receipt of a petition for a declaratory ruling, the commission may request from the petitioner any other information it requires for the issuance of its ruling. Following the receipt of the petition, the commission shall issue its declaratory ruling and serve a copy of it by mail on the petitioner.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:07:02, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-15, 1-26-25.

20:69:02:05. Number of copies of petition for declaratory ruling--Electronic filing. A person filing a petition for declaratory ruling under this chapter shall file an original and seven copies with the commission. The executive director may reject any petition if it is not submitted with the required number of copies. However, the executive director may accept a petition for declaratory ruling in an electronic format if it is readily accessible by the commission and in a format that can be downloaded, printed, or otherwise maintained as a record for future reference. A petitioner who files a petition for declaratory ruling in electronic format, shall submit one copy of the original.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:07:03, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(6).

Law Implemented: SDCL 1-26-15, 36-21A-89.

20:69:02:06. Number of copies of petition for promulgation of rule--Electronic filing. A person filing a petition for the initiation, repeal, or amendment of a rule must file an original and seven copies with the commission. The executive director may reject any petition if it is not submitted with the required number of copies. However, the executive director may accept a petition in an electronic format that is readily accessible by the commission and in a format if it can be downloaded, printed, or otherwise maintained as a record for future reference. A petitioner who files a petition in electronic format, shall submit one copy of the original.

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Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:08:03, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(6).

Law Implemented: SDCL 1-26-13, 36-21A-89.

Cross-Reference: Petition for rules, SDCL 1-26-13.

20:69:02:07. Petition for contested case hearing. A person aggrieved by any action of the commission taken without a hearing may, within 30 days following the date of the commission action, petition the commission for a hearing to be held at a time and place established by the commission. The hearing is a contested case.

Source: SL 1975, ch 16, § 1; 5 SDR 21, effective September 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:09:01, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-16, 1-26-18.

Cross-Reference: Procedure to follow in contested cases, SDCL 1-26-16 to 1-26-29.

20:69:02:08. Petition for review of decision on contested case. Within 10 days after receipt of the commission's decision, a party to the hearing may file a petition with the commission for review of its decision. The commission, in its discretion, may deny the petition, order a rehearing, or direct any other proceedings it considers appropriate. Upon rehearing or other proceedings, the commission may affirm, reverse, or modify its earlier decision. Notice of the commission's decision on the petition to review shall be served by mail on the petitioner and other affected parties.

Source: SL 1975, ch 16, § 1; 5 SDR 21, effective September 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:09:06, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-18, 1-26-25.

CHAPTER 20:69:03 LICENSING AND LICENSES

Section

Section

- 20:69:03:01 Application for license by examination.
- 20:69:03:02 Proof of education to accompany application.
- 20:69:03:02.01 Proof of passing score to accompany application.
- 20:69:03:03 Repealed.
- 20:69:03:04 Authority to take examination.
- 20:69:03:04.01 Registering for examination.
- 20:69:03:05 Failure to appear for examination.
- 20:69:03:06 Administration of examination.
- 20:69:03:06.01 Testing service.
- 20:69:03:07 Passing score on licensing examination.
- 20:69:03:08 Cheating on examination.
- 20:69:03:09 Reinstatement of licensees discharged from armed forces.
- 20:69:03:10 Application fee -- Brokers and salespersons.
- 20:69:03:11 Repealed.
- 20:69:03:12 Application fee -- Firm license.
- 20:69:03:12.01 Registration fee -- Broker or associate licensee business corporation or limited liability company.
- 20:69:03:13 Biennial renewal fee -- Broker.
- 20:69:03:14 Biennial renewal fee -- Salesperson.
- 20:69:03:15 Biennial renewal fee -- Firm.
- 20:69:03:16 Office management.
- 20:69:03:17 Commission split -- Out-of-state.
- 20:69:03:18 Transferred.
- 20:69:03:19 Advance compensation.
- 20:69:03:20 Replacement of license -- License displayed.
- 20:69:03:21 Reciprocal agreements.
- 20:69:03:22 Nonresident licensee as applicant -- Certificate of licensure required.
- 20:69:03:22.01 Nonresident licensee -- Renewal of license on active status -- Certificate of licensure required.
- 20:69:03:23 Supervising broker to be licensed in South Dakota.
- 20:69:03:24 South Dakota resident licensed as salesperson by examination in another state -- Requirements for obtaining a broker associate license in South Dakota.
- 20:69:03:25 Nonresident salesperson licensed in South Dakota -- Time to qualify for broker associate upon establishing residency in state.
- 20:69:03:26 Fees -- Certification of licensure, additional license, duplicate license, and transfer of license.
- 20:69:03:27 Late renewal fee.

20:69:03:01. Application for license by examination. An applicant for license by examination shall file an application with the commission on a form provided by the commission

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within 60 days after the date of notice of having passed the examination. The application shall be accompanied by the fee prescribed by § 20:69:03:10.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:01, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998.

General Authority: SDCL 36-21A-89(1).

Law Implemented: SDCL 36-21A-35.

20:69:03:02. Proof of education to accompany application. An applicant for a license by examination shall submit proof that the applicant successfully completed the required education within the two years before the date of application.

Source: 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 30 SDR 40, effective September 30, 2003.

General Authority: SDCL 36-21A-31.

Law Implemented: SDCL 36-21A-31.

20:69:03:02.01. Proof of passing score to accompany application. An applicant for license by examination shall submit proof that the applicant successfully completed the licensing examination.

Source: 24 SDR 172, effective June 16, 1998.

General Authority: SDCL 36-21A-89(1).

Law Implemented: SDCL 36-21A-41.

20:69:03:03. Photograph to accompany application. Repealed.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:02, 20 SDR 18, effective August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:03:04. Authority to take examination. A person may not take the real estate examination unless the person has completed the prescribed prerequisite education and registered to take the examination.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:03:06, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 30 SDR 40, effective September 30, 2003.

General Authority: SDCL 36-21A-30.1, 36-21A-89(2).

Law Implemented: SDCL 36-21A-36, 36-21A-41.

20:69:03:04.01. Registering for examination. A person registering to take the real estate examination must complete the prerequisite education before submitting the registration.

Source: 24 SDR 172, effective June 16, 1998.

General Authority: SDCL 36-21A-30.1, 36-21A-34, 36-21A-89(1).

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Law Implemented: SDCL 36-21A-36, 36-21A-41.

20:69:03:05. Failure to appear for examination. A person registered to take an examination must appear in person to take the examination as scheduled. If the person fails to do so, the person forfeits the examination fee and must register again to take the examination.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:07, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998.

General Authority: SDCL 36-21A-89(1).

Law Implemented: SDCL 36-21A-36, 36-21A-41.

20:69:03:06. Administration of examination. The licensing examination shall be conducted under the supervision of the executive director of the commission. The examiner shall require identification supplied to the registered person by the commission for admission to the examination room. Before beginning the examination, the person must state in writing that the person has not solicited or received any information concerning the contents of the examination about to be written and during or subsequent to the examination will not disclose its contents.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:08, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998.

General Authority: SDCL 36-21A-89(1).

Law Implemented: SDCL 36-21A-36.

20:69:03:06.01. Testing service. The commission may negotiate an agreement with a testing service for examination development, administration, scoring, reporting, and analysis.

Source: 24 SDR 172, effective June 16, 1998.

General Authority: SDCL 36-21A-89(1).

Law Implemented: SDCL 36-21A-36.

20:69:03:07. Passing score on licensing examination. The passing score on the licensing examinations is 75.

Source: 7 SDR 31, effective October 6, 1980; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:08.01, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-36, 36-21A-41.

20:69:03:08. Cheating on examination. The examination of any person who is caught cheating during an examination is void.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:03:09, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998.

General Authority: SDCL 36-21A-89(1).

Law Implemented: SDCL 36-21A-36, 36-21A-41.

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20:69:03:09. Reinstatement of licensees discharged from armed forces. Application for reinstatement of a license by a former licensee discharged from the armed forces shall be made on forms provided by the commission.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; repealed, 12 SDR 102, effective December 22, 1985; readopted, 18 SDR 101, effective December 17, 1991; transferred from § 20:56:03:14, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-67, 36-21A-89.

Law Implemented: SDCL 36-21A-67.

20:69:03:10. Application fee -- Brokers and salespersons. The application fee for brokers, including restricted brokers, and salespersons is \$225.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:03:20, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.

General Authority: SDCL 36-21A-49.

Law Implemented: SDCL 36-21A-49.

20:69:03:11. Reapplication fee -- Brokers and salesmen. Repealed.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:03:21, 20 SDR 18, effective August 16, 1993; repealed, 24 SDR 172, effective June 16, 1998.

20:69:03:12.01. Registration fee -- Broker or associate licensee business corporation or limited liability company. The registration fee for a broker or an associate licensee business corporation or limited liability company is \$100.

Source: 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-46.1.

Law Implemented: SDCL 36-21A-46.1.

20:69:03:12.01. Registration fee -- Associate licensee business corporation or limited liability company. The registration fee for an associate licensee business corporation or limited liability company is \$100.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-46.1.

Law Implemented: SDCL 36-21A-46.1.

20:69:03:13. Biennial renewal fee -- Broker. The biennial renewal fee for a broker's license, including restricted licenses, is \$125.

Source: SL 1975, ch 16, § 1; 4 SDR 35, effective December 22, 1977; 7 SDR 31, effective October 6, 1980; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective

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July 1, 1986; 13 SDR 31, effective September 23, 1986, effective January 1, 1988; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:03:23, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.

General Authority: SDCL 36-21A-61.

Law Implemented: SDCL 36-21A-61.

20:69:03:14. Biennial renewal fee -- Salesperson. The biennial renewal fee for a salesperson's license is \$125.

Source: SL 1975, ch 16, § 1; 4 SDR 35, effective December 22, 1977; 7 SDR 31, effective October 6, 1980; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 31, effective September 23, 1986, effective January 1, 1988; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:03:24, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.

General Authority: SDCL 36-21A-61.

Law Implemented: SDCL 36-21A-61.

20:69:03:15. Biennial renewal fee -- Firm. The biennial renewal fee for a firm license is \$125.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 31, effective September 23, 1986, effective January 1, 1988; 15 SDR 100, effective January 10, 1989; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:03:25, 20 SDR 18, effective August 16, 1993; 29 SDR 48, effective October 10, 2002.

General Authority: SDCL 36-21A-61.

Law Implemented: SDCL 36-21A-61.

20:69:03:16. Office management. A broker may assign management responsibilities to a broker associate. However, a salesperson may not assume any management responsibilities.

Source: 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(1).

Law Implemented: SDCL 36-21A-71.

20:69:03:17. Commission split -- Out-of-state. A licensed broker may divide or share a real estate commission with a licensed broker in another state if the latter does not carry on any of the negotiations in this state either by physically entering the state or by communicating with the broker electronically or through other media.

Source: 3 SDR 34, effective November 3, 1976; transferred from § 20:56:14:01, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:05:11.01, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(3).

Law Implemented: SDCL 36-21A-54.

20:69:03:18. Transferred to §§ 20:69:16:01 and 20:69:16:02.

Source: 16 SDR 36, effective August 29, 1989; transferred from § 20:56:05:12.02, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-85.

Law Implemented: SDCL 36-21A-85.

20:69:03:19. Advance compensation. If an agency agreement provides for compensation for services for other than a sale or lease of an interest in real property, the licensee may collect compensation for those services before closing the sale or lease of the interest in the real property.

Source: 16 SDR 36, effective August 29, 1989; transferred from § 20:56:05:21.01, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-84.

Law Implemented: SDCL 36-21A-84.

20:69:03:20. Replacement of license -- License displayed. If a license is lost, misplaced, stolen, or destroyed, the licensee shall immediately report that fact to the commission in writing. Upon the commission's receipt of a statement by the licensee, the commission may issue a duplicate of the original license. The only license that can be displayed is the original or a duplicate issued by the commission.

Source: 1 SDR 33, effective January 1, 1975; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:12:20, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(2).

Law Implemented: SDCL 36-21A-51, 36-21A-52.

20:69:03:21. Reciprocal agreements. The commission may enter into written agreement with other states for the purpose of licensing by reciprocity.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-54.

Law Implemented: SDCL 36-21A-54.

20:69:03:22. Nonresident licensee as applicant -- Certificate of licensure required. A nonresident licensee who is an applicant for licensure in this state shall submit a certificate of licensure from the licensing agency of every state in which the applicant holds or has held a license. The certificate of licensure shall be completed within 30 days before the date of application, stating that the applicant's license is on active status and in good standing and that no complaint is pending.

Source: 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-54, 36-21A-89(3).

Law Implemented: SDCL 36-21A-54, 36-21A-89.

20:69:03:22.01. Nonresident licensee -- Renewal of license on active status -- Certificate of licensure required. A nonresident broker, broker associate or salesperson licensed in this state who

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renews the license on active status shall submit a certificate of licensure from the licensing agency of the state where the nonresident licensee maintains residency. The certificate of licensure shall be completed within 30 days before the date of filing the renewal application, stating the nonresident's license is on active status and in good standing and that no complaint is pending. The certificate of licensure must accompany the renewal form.

Source: 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-54, 36-21A-89(3).

Law Implemented: SDCL 36-21A-54, 36-21A-89.

20:69:03:23. Supervising broker to be licensed in South Dakota. A licensed nonresident salesperson or broker associate shall be associated with a licensed South Dakota broker or a nonresident broker licensed by the commission.

Source: 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(3).

Law Implemented: SDCL 36-21A-54.

20:69:03:24. South Dakota resident licensed as salesperson by examination in another state -- Requirements for obtaining a broker associate license in South Dakota. A South Dakota resident who receives a license as a salesperson by examination in another licensing jurisdiction must complete the education and examination requirements for a broker associate license pursuant to § 20:69:04:03 and SDCL 36-21A-43 before that person may receive a broker associate license in this state.

Source: 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.1, 36-21A-89(2).

Law Implemented: SDCL 36-21A-30.1, 36-21A-89(2).

20:69:03:25. Nonresident salesperson licensed in South Dakota -- Time to qualify for broker associate license upon establishing residency in state. A nonresident salesperson licensed in this state, who establishes residency in South Dakota, shall complete the requirements for a broker associate license pursuant to SDCL 36-21A-34.2 and § 20:69:04:03 by the end of the current license term or place the license on inactive status. The commission may grant a reasonable exception to this rule.

Source: 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(3), 36-21A-30.1.

Law Implemented: SDCL 36-21A-30.1, 36-21A-89(3).

20:69:03:26. Fees -- Certification of licensure, additional license, duplicate license, and transfer of license. Fees include the following:

- (1) For each certification of licensure, \$15;
- (2) For each additional license, a biennial fee of \$30;
- (3) For each license included in a statement of registration to change an office or place of business, \$15;

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(4) For each license included in a statement of registration to change association with a responsible broker, \$15; and

(5) For each duplicate license, if the original license is lost or destroyed, \$15.

Source: 34 SDR 323, effective July 3, 2008.

General Authority: SDCL 36-21A-60.

Law Implemented: SDCL 36-21A-60.

20:69:03:27. Late renewal fee. Any licensee who files a late registration application and fee for renewal pursuant to SDCL 36-21A-66 shall pay a late fee based on the date the renewal application is filed, as follows:

(1) December, \$20;

(2) January, \$40;

(3) February, \$60;

(4) March, \$80;

(5) April, \$100;

(6) May, \$120; and

(7) June, \$140.

Source: 34 SDR 323, effective July 3, 2008.

General Authority: SDCL 36-21A-66.

Law Implemented: SDCL 36-21A-66.

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CHAPTER 20:69:04 PRELICENSING EDUCATION

Section

- 20:69:04:01 Application for approval of classroom instruction.
- 20:69:04:01.01 Certificate of approval.
- 20:69:04:01.02 Criteria for approval of classroom instruction.
- 20:69:04:02 Contents of broker associate prelicensing course.
- 20:69:04:03 Contents of broker associate upgrade course.
- 20:69:04:04 Contents of responsible broker course.
- 20:69:04:05 Order of courses to be passed.
- 20:69:04:06 Conditions for credit for alternative courses.
- 20:69:04:07 Application for credit for alternative courses.
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- 20:69:04:24 Distance education defined.
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- 20:69:04:27 Criteria for distance education or independent study course approval.
- 20:69:04:28 Student certification required
- 20:69:04:29 Material change.

20:69:04:01. Application for approval of classroom instruction. A course provider desiring to give approved classroom instruction to prospective real estate licensees shall apply on a form

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provided by the commission. The application must be filed with the commission at least 30 days before the course begins.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:01, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-31, 36-21A-34.

20:69:04:01.01. Certificate of approval. The commission shall grant a certificate of approval for each course of study approved by the commission. The certificate is valid for three years.

Source: 24 SDR 172, effective June 16, 1998.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-34, 36-21A-89(4).

20:69:04:01.02. Criteria for approval of classroom instruction. The application form for approval of classroom instruction shall include the following information and enclosures:

- (1) Name, address, and telephone number of the course provider;
- (2) The title of the course;
- (3) A complete description or copies of all materials to be distributed to the participants;
- (4) The date and exact location of each presentation of the course;
- (5) The duration and time of the course;
- (6) A comprehensive, detailed outline of the subject matter together with course objectives, the time sequence of each segment, the faculty for each segment, and the teaching technique used in each segment;
- (7) The method of evaluation of the program;
- (8) The procedure for measuring attendance; and
- (9) A description of the faculty, including name, professional educational background, and practical or teaching experience. A complete résumé may be furnished.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-89(4).

20:69:04:02. Contents of broker associate prelicensing course. The broker associate prelicensing course shall provide for a minimum of 116 instructional hours in subject areas approved by the commission, including the following subject areas:

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- (1) South Dakota real estate license law and rules;
- (2) Characteristics and nature of real property;
- (3) Agency;
- (4) Listing property;
- (5) Selling property;
- (6) Contracts and contingencies;
- (7) Property management;
- (8) Finance;
- (9) Settlement/transfer of ownership/closings;
- (10) Federal laws, including the Fair Housing ACT, Real Estate Settlement Procedures Act, Sherman Antitrust Act, Americans with Disabilities Act, and Real Estate Settlement Procedures Act, and environmental regulations; and
- (11) Professional responsibilities and ethics.

The course shall include practicum exercises and examinations in each area of study.

Source: 2 SDR 7, effective July 30, 1975; transferred from § 20:56:04:19, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:04:02.01, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.1, 36-21A-31.

Law Implemented: SDCL 36-21A-30.1, 36-21A-31.

20:69:04:03. Contents of broker associate upgrade course. The broker associate upgrade course for a licensed salesperson upgrading to the broker associate level shall provide for a minimum of 40 instructional hours in subject areas approved by the commission, including the following subject areas:

- (1) South Dakota real estate license law and rules;
- (2) Simulation examination preparation;
- (3) Contracts, trust accounting, and closings;
- (4) Brokerage relationships;
- (5) Federal laws, including the Fair Housing Act, Real Estate Settlement Procedures Act, Sherman Antitrust Act, and Americans with Disabilities Act;
- (6) Professional responsibilities and ethics; and
- (7) A review of the principles and practices of real estate.

Practicum exercises and experiences beyond the basic fundamentals of real estate principles and practices must be included in each area of study.

Source: 2 SDR 7, effective July 30, 1975; transferred from § 20:56:04:20, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:02.02, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 29 SDR 66, effective November 14, 2002; 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.1.

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.1.

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20:69:04:04. Contents of responsible broker course. The responsible broker course is a course in brokerage and human resource management. The course must be a minimum of 15 hours long and contain a final examination.

Source: 2 SDR 7, effective July 30, 1975; transferred from § 20:56:04:21, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:02.03, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-31.

Law Implemented: SDCL 36-21A-31.

20:69:04:05. Order of courses to be passed. The broker associate prelicensing course or broker upgrade course must be completed and passed before enrolling in the responsible broker course.

Source: 2 SDR 7, effective July 30, 1975; 5 SDR 21, effective September 21, 1978; transferred from § 20:56:04:18, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:02.04, 20 SDR 18, effective August 16, 1993; 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-31.

Law Implemented: SDCL 36-21A-31.

20:69:04:06. Conditions for credit for alternative courses. A person may apply to the commission for credit for the broker associate prelicensing course, the broker upgrade course, or responsible broker course based on satisfactory completion of a similar real estate course at one of the following institutions:

- (1) A regionally accredited college or university;
- (2) A regionally accredited vocational school; or
- (3) Courses in a prelicensing education school or institute in a state that has statutorily mandated prelicensing education.

Satisfactory completion of a real estate course, for the purpose of this section, means attaining a passing grade in the course as determined by the instructor.

Source: 2 SDR 7, effective July 30, 1975; transferred from § 20:56:04:22, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:04:02.05, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.1.

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.1.

20:69:04:07. Application for credit for alternative courses. An application for credit under § 20:69:04:06 must be accompanied by an authenticated transcript from the college, university, vocational school, or prelicensing education school and a description of the course or courses completed.

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Source: 2 SDR 7, effective July 30, 1975; transferred from § 20:56:04:23, 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:04:02.06, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-31, 36-21A-34.

Law Implemented: SDCL 36-21A-31, 36-21A-34.

20:69:04:08. Qualifications for classroom instructor. An applicant seeking commission approval to teach prelicensing education must furnish evidence satisfactory to the commission that the applicant has at least one of the following qualifications:

- (1) A bachelor's degree in the field in which the person is to teach;
- (2) A valid teaching certificate or credential from South Dakota or another state authorizing the holder to teach in the field of instruction being offered;
- (3) Five years of full-time experience in a professional trade or technical occupation in the applicable field; or
- (4) Any combination of at least five years of full-time applicable field experience and college level education.

In addition to meeting at least one of the qualifications in subdivisions (1) to (4), inclusive, an instructor seeking approval to provide instruction of the broker associate prelicensing course, broker associate upgrade course, or responsible broker course shall complete the responsible broker course prior to approval and complete an approved instructor development workshop within one year of approval.

Source: SL 1975, ch 16, § 1; 7 SDR 31, effective October 6, 1980; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:03, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001; 30 SDR 40, effective September 30, 2003; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31.

20:69:04:08.01. Instructors. No instructor may teach prelicensing courses unless approved, by name, by the commission. However, a guest speaker may teach a designated section of a prelicensing course pursuant to § 20:69:04:08.03.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:08.02. Application for approval of instructor -- Guest speakers exempt. An applicant for instructor approval shall apply on a form provided by the commission. A guest speaker is exempt from making application if requesting approval pursuant to § 20:69:04:08.03.

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Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:08.03. Utilization of guest speakers -- Résumé to accompany course application.

A course provider may utilize guest speakers with expertise in a particular area in any approved course if an approved instructor is present at the time of the presentation. A course provider may utilize a guest speaker without an approved instructor present with the prior written approval of the commission.

An application for approval of a course utilizing guest speakers must include a résumé of each speaker.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:08.04. Certificate of instructor approval -- Approval certificates not issued to guest speakers. The commission shall grant a certificate of approval for each instructor approved by the commission. Certificates of approval will not be issued to guest speakers who make application pursuant to § 20:69:04:08.03.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:09. Educational facilities. An approved course of instruction must have the classrooms and other facilities and personnel necessary to implement the program as determined by the real estate commission.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:04, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4)

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:09.01. Instructional techniques. Classroom courses must be presented to students through interactive instructional techniques. Interactive instruction includes providing a student the opportunity for immediate exchange with an instructor in a classroom setting and immediate assessment and remediation through computer assisted or other audio or audiovisual interactive instruction. An instructor may not provide instruction primarily by having students read text material, listen to audio tapes, watch video tapes or films, or study questions similar to those on the state licensing examinations.

Source: 26 SDR 41, effective September 29, 1999; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:10. Approval of classroom instruction, distance education, or independent study course. Prior to the contemplated date of opening, the commission shall notify the applicant in writing of its decision to grant or deny approval. No applicant may accept students without the commission's approval.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:05, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:10.01. Auditing. The commission may audit courses.

Source: 24 SDR 172, effective June 16, 1998; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:11. Withdrawal of approval for course or instructor. If the commission at any time determines that a person or course approved pursuant to chapter 20:69:04 is not continuing to meet the requirements of SDCL chapter 36-21A and this chapter, it shall immediately notify the course provider in writing detailing the deficiencies requiring correction. The school's approval by the commission shall continue 90 days from the date of the commission's written notice to the course provider, and if, at the expiration of that period, the course provider has failed to correct to the commission's satisfaction the deficiencies noted, the commission may withdraw approval of the course or instructor.

If the commission disciplines an instructor who holds a real estate license for acts committed as a licensee, the commission may also withdraw that licensee's approval as an instructor.

Source: SL 1975, ch 16, § 1; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:08, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

Cross-Reference: Procedure to follow in licensing matters, SDCL 1-26-16 to 1-26-19.1.

20:69:04:11.01. Denial of approval for course or instructor. The commission may deny approval of a real estate course or instructor if it determines that either is not in compliance with SDCL chapter 36-21A and this article. Any person aggrieved by denial of approval by the commission may file a written request for a hearing pursuant to § 20:69:02:07.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-89(4).

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Cross-Reference: Procedure for a contested case, SDCL chapter 1-26.

20:69:04:12. Withdrawal of approval for inactivity. The commission may withdraw its approval for any course that has not been offered for at least one year.

Source: 7 SDR 31, effective October 6, 1980; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:08.01, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:13. Credit for previously unapproved courses. A person completing any course which has not received prior commission approval shall submit a complete list of the courses taken, the number of hours of study for each course, and the qualifications of the instructors and shall answer any additional questions which the commission may have. After review of the information, the commission may approve the course and give the applicant credit for meeting all or a portion of the educational requirements imposed by SDCL chapter 36-21A.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:04:10, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001; 30 SDR 40, effective September 30, 2003.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31.

20:69:04:14. Classroom hour. A classroom hour is a period of at least 50 minutes of actual classroom instruction. Additional study assignments are not counted as hours of classroom instruction.

Source: 2 SDR 7, effective July 30, 1975; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:13, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:15. Length of course. No more than eight hours of instruction may be offered in one day.

Source: 2 SDR 7, effective July 30, 1975; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:14, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:16. Examination. A final examination must be given in each course. A copy of the final examination and the answers must be filed with the commission.

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Source: 2 SDR 7, effective July 30, 1975; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:15, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:17. Reexamination. A candidate for a license who fails the final examination of a preclicensing course may retake the examination without retaking the education.

Source: 15 SDR 100, effective January 10, 1989; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:04:15.01, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(2).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:18. Schedule. A schedule of all courses offered, including the date, time, and place where they will be offered, must be furnished to the commission before the courses begin.

Source: 2 SDR 7, effective July 30, 1975; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:04:16, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34.

20:69:04:19. Preclicensing education certificate of attendance. A course provider shall provide an individual certificate of attendance to each licensee upon completion of the preclicensing course under the following conditions. The certificate shall contain the licensee's name, the course title, the date, the location of the course, the number of approved credit hours, and the signature of the course provider or instructor. No certificate of attendance may be issued to a licensee who is absent for more than ten percent of the classroom hours.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-89(4).

20:69:04:20. Course provider reporting requirements. The course provider shall submit a list of participants to the commission within ten days after completion of a course. The course provider shall provide a course evaluation form to each licensee for completion and submit the completed course evaluations to the commission within ten days after completion of a course.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-89(4).

20:69:04:21. Preregistration allowed -- Notice of cancellation required. A course provider offering approved preclicensing education courses may require preregistration with a registration cutoff date. The requirement must be advertised prior to each course. A course provider must notify

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registrants if the course is cancelled. The notification must be made at least 48 hours before the time of the beginning of the course.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-89(4).

20:69:04:22. Application for approval of distance education or independent study course.

A course provider desiring to give approved independent study or distance education courses to prospective real estate licensees shall apply on a form provided by the commission. The application must be filed with the commission at least 30 days before the course is offered.

The application form shall include the following information and enclosures:

- (1) Name, address, and telephone number of the course provider;
- (2) Course title;
- (3) The specific subject matter requirement met by the course;
- (4) The names of any instructor who will be available to answer student questions, the means of contact, and the hours of availability;
- (5) The overall structure, functioning, and administration of the proposed course;
- (6) A complete list of all lessons, modules, and learning objectives for each;
- (7) An explanation of the remediation process which is in effect to accomplish mastery of material when specific deficiencies are identified; and
- (8) A description of the procedures used to ensure exam security.

Source: 28 SDR 28, effective September 2, 2001; 30 SDR 40, effective September 30, 2003.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-89(4).

20:69:04:23. Additional requirements for distance education course offerings. In addition to the requirements of § 20:69:04:21, an application for approval of a distance education course must include the following:

- (1) A complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the course material and an assessment of the availability and adequacy of the equipment, software, or other technologies to the achievement of the course's instructional claims; and
- (2) An explanation of how the course measures, documents, and records that the student has engaged in the required interactive exercises, achieved the required level of

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mastery, and spent the required amount of time completing the course and how the course provides protection against loss of student data due to hardware or software failure or against inadvertent loss by the student.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

20:69:04:24. Distance education defined. As used in this chapter, a distance education course is one in which instruction takes place in other than a traditional classroom setting, the instructor and student are in physically separate locations, and instructional methods include interactive video-based instruction, computer conferencing, interactive audio, interactive computer software, and internet-based instruction.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

20:69:04:25. Independent study defined. As used in this chapter, an independent study is a course in which no interaction with an instructor is planned or implied as part of the learning process.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

20:69:04:26. Standards for distance education. A distance education course must provide mastery of the material. The course must:

- (1) Divide the material into major learning units, each of which is further divided into modules of instruction;
- (2) Specify learning objectives for each learning unit or module of instruction. Learning objectives must be comprehensive enough to ensure that if all the objectives are met, the entire content of the course will be mastered;
- (3) Specify an objective, quantitative criterion for mastery used for each learning objective and provide a structured learning method designed to enable students to attain each objective;
- (4) Provide a means of diagnostic assessment of each student's performance on an ongoing basis during each module of instruction, including appropriate remediation if required; and
- (5) Require that the student demonstrate adequate comprehension of all material covered by the learning objectives for the module or unit before completing that module or unit.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

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Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

20:69:04:27. Criteria for distance education or independent study course approval. The commission may approve any prelicensing course that is provided by a public or private school, organization, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course, shall consider the following minimum criteria:

- (1) The course provider must specify the learning objectives for each lesson and clearly demonstrate that the objectives cover the required subject matter. Objectives must be specific to ensure that all relative content is covered adequately to ensure mastery of the objectives;
- (2) The course provider must demonstrate that the course includes the same or reasonably similar informational content as a course that would otherwise qualify for the requisite number of hours of classroom-based instruction, and that students must proceed through and demonstrate comprehension of all the material;
- (3) If the course is a distance education course, it must include consistent and regular interactive events as appropriate to the medium. The interactive elements must be designed to promote student involvement in the learning process, and must directly support the student's achievement of the course's learning objectives. The course approval submission must identify the types of interactive events included in the course and specify how the interactive events contribute to the achievement of the stated learning objectives;
- (4) The course must require that the student demonstrate mastery of the learning objectives as designated for each lesson in order to successfully complete the lesson. The course must provide a mechanism of individual remediation to correct any deficiencies identified during the instruction and assessment process. In independent study courses, this remediation may be accomplished by quizzes or other exercises with detailed rationales in the answer key provided to students;
- (5) The course provider must measure, at regular intervals, the student's progress toward and completion of the mastery requirement of each lesson or module covering all the required subject matter. In the case of computer-based instruction, the course software must include automatic shutdown after a period of inactivity;
- (6) The applicant must demonstrate that approved instructors are available to answer student questions regarding course content at reasonable times and by reasonable means, including in-person contact, individual and conference telephone calls, E-mail, and fax. Communication by written postal correspondence alone is insufficient to satisfy the requirements of this subdivision.
- (7) The course provider shall provide reasonable security to ensure that the student who receives credit for the course is the student who enrolled in and completed the course. Both the school and the student must certify in writing that the student has successfully completed the course; and

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- (8) The course provider must require that the student pass a comprehensive exam of 100 multiple-choice questions with a minimum passing score of 80 percent.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

Law Implemented: SDCL 36-21A-30.1, 36-21A-31, 36-21A-34, 36-21A-89(4).

20:69:04:28. Student certification required. Any school offering an approved distance education or independent study course must obtain from each student a certification statement substantially as follows: "I certify that I have personally completed each assigned module of instruction for this course without the assistance of any person other than my instructor and that all work represented as being mine is in fact my own work."

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-89(4).

20:69:04:29. Material change. A course provider of an approved real estate course shall immediately notify the commission of any material change contained in the application for approval or in the attached exhibits. A course provider may seek approval of a course subsequent to a course offering by submitting all information requested.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(4).

Law Implemented: SDCL 36-21A-89(4).

CHAPTER 20:69:05 DISCIPLINARY PROCEEDINGS

Section

20:69:05:01	Complaints authorized -- Procedure following filing -- Electronic filing.
20:69:05:02	Dismissal of complaint.
20:69:05:03	Informal consultation.
20:69:05:04	Assurance of voluntary compliance.
20:69:05:05	Formal proceedings.
20:69:05:06	Contents of commission complaint.
20:69:05:07	Date of hearing.
20:69:05:08	Answer.
20:69:05:09	Disqualification.
20:69:05:10	Per diem and mileage.
20:69:05:11	Final action by commission.

Cross-Reference: Procedure to follow in licensing matters, SDCL 1-26-16 to 1-26-19.1.

20:69:05:01. Complaints authorized -- Procedure following filing -- Electronic filing. A person claiming that a licensee or a subdivider has engaged or is engaging in conduct constituting grounds for disciplinary action may file with the executive director of the commission a written complaint, verified on oath, stating the name and address of the licensee or subdivider complained against and fully detailing the conduct against which the complaint is made. A commission member or the executive director may file a complaint. Upon its receipt, the executive director of the commission shall immediately serve a copy of the complaint by mail on the licensee or subdivider complained against and on any other affected parties. The licensee or subdivider complained against has 20 days to answer the complaint after its service. The licensee or subdivider shall serve an answer to the complaint on the executive director. The executive director may reject the complaint if it is not in proper form. The person serving an answer under this section shall serve an original and eight copies on the executive director. However, the executive director may accept a complaint or answer in an electronic format if it is readily accessible by the commission and in a format that can be downloaded, printed, or otherwise maintained as a record for future reference. Any person filing a complaint or an answer electronically shall submit one copy of the original. The executive director may reject the complaint or answer for failure to serve the required number of copies.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 3 SDR 34, effective November 3, 1976; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:06:01, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(5).

Law Implemented: SDCL 1-26-29, 36-21A-68, 36-21A-86, 36-21A-93.

20:69:05:02. Dismissal of complaint. After receipt of the answer to the complaint specified in § 20:69:05:01 or after the time has expired for the licensee or subdivider complained against to answer, the executive director shall submit the complaint and any answer to the commission. The commission shall examine the complaint to determine whether or not it has merit or is frivolous or

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whether or not it charges conduct constituting grounds for disciplinary action. If the commission determines that the complaint is without merit or is frivolous or that it charges conduct not constituting grounds for disciplinary action, it shall dismiss the complaint and notify in writing the complainant and the subdivider or licensee complained against and any other affected parties, stating the reasons for dismissal. If the relief sought does not fall within the jurisdiction of the commission, it shall dismiss the complaint.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 5 SDR 21, effective September 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:02, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-29, 36-21A-86.

20:69:05:03. Informal consultation. If the commission considers the complaint to be of a serious nature constituting grounds for disciplinary action, it may, in its discretion, consult with the party or parties affected in an effort to resolve the matter satisfactorily without the necessity of a formal hearing. The commission shall notify in writing the person making the complaint, the subdivider or licensee complained against, and any other affected parties of the results of the informal consultation and any action taken. Informal consultation does not prevent the commission from thereafter conducting a formal hearing.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 5 SDR 21, effective September 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:03, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-29, 36-21A-86.

20:69:05:04. Assurance of voluntary compliance. In the enforcement of this chapter, the commission may accept an assurance of voluntary compliance regarding any act or practice alleged to violate this article or SDCL Chapter 36-21A from a person who has engaged in, is engaging in, or is about to engage in such an act or practice. The assurance must be in writing and is subject to the approval of the commission. The assurance may include a stipulation for the voluntary payment by the alleged violator of the costs of the investigation and any amount necessary to restore to a person money or property which may have been acquired by the alleged violator by means of such an act or practice. Assurance of voluntary compliance is not considered an admission to a violation for any purpose; however, proof of failure to comply with the assurance of voluntary compliance is prima facie evidence of a violation of this chapter.

Source: 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:06:03.01, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-24, 1-26-29, 36-21A-68, 36-21A-86.

20:69:05:05. Formal proceedings. If the commission decides to conduct a formal hearing after a complaint has been filed and after any informal consultation, the commission shall mail a

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formal complaint issued in its name and a notice of hearing to the licensee or subdivider complained against, the person making the complaint, and any other affected parties.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 5 SDR 21, effective September 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:04, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-29, 36-21A-86.

20:69:05:06. Contents of commission complaint. The commission complaint shall contain the name of the subdivider or licensee complained against, the name and address of the person making the complaint, the details of the conduct complained against, and the date of the formal commission complaint.

Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:05, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-29, 36-21A-86.

20:69:05:07. Date of hearing. The hearing on a complaint shall be held at a time and place designated by the commission.

Source: SL 1975, ch 16, § 1; 2 SDR 7, effective July 30, 1975; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:06:07, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-86.

20:69:05:08. Answer. The subdivider or licensee may file prior to or submit at the time of hearing an answer admitting, denying, qualifying, or explaining any or all of the facts contained in the formal commission complaint. The answer must be filed within 20 days after the receipt of the formal commission complaint. The person serving an answer under this section shall serve an original and eight copies on the executive director. The executive director may reject the answer for failure to serve the required number of copies.

Source: SL 1975, ch 16, § 1; 3 SDR 34, effective November 3, 1976; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:08, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-29, 36-21A-86.

20:69:05:09. Disqualification. If the complaint referred to in § 20:69:05:01 was filed by a commission member, that commission member is disqualified from sitting at the hearing as a commission member and from participating in the decision made by the commission. The commission member may appear as a witness and give advice as to procedure.

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Source: SL 1975, ch 16, § 1; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:09, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-26, 1-26-29, 36-21A-86.

20:69:05:10. Per diem and mileage. The commission may authorize per diem and mileage for complainants and affected parties at informal consultations and for complainants and witnesses at formal hearings. The per diem may not exceed the amount specified in SDCL Chapter 19-5-1 and the mileage may not exceed that authorized by §§ 5:01:02:01 and 5:01:02:02.

Source: 2 SDR 7, effective July 30, 1975; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:12, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-19.1, 1-26-29, 36-21A-86.

20:69:05:11. Final action by commission. After hearing the evidence and arriving at a decision that unprofessional conduct has been proved, the commission may levy a fine, revoke the license, suspend the license, issue a letter of reprimand to be placed in the file of the person complained against, or take a combination of these actions. If unprofessional conduct has not been proved, the commission shall dismiss the complaint or the parts of the complaint not proved. A letter of reprimand shall state the actions against which a complaint was filed with the names, dates, places, and list of witnesses involved in the complaint. This section does not prevent the commission from compromising a formal hearing and the commission may also allow an assurance of voluntary compliance as prescribed by § 20:69:05:04.

Source: 2 SDR 7, effective July 30, 1975; 5 SDR 21, effective September 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:06:13, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 1-26-25, 1-26-29, 36-21A-68, 36-21A-86.

Cross-Reference: Petition for review, § 20:69:02:08.

CHAPTER 20:69:06 REAL ESTATE AUCTIONEER LICENSES

Section

20:69:06:01	Requirements for real estate auction.
20:69:06:02	Auctioneers -- License required.
20:69:06:03	Qualifications of applicants.
20:69:06:04	Duties of auctioneer.
20:69:06:05	Listings to be in writing.
20:69:06:06	Auction advertisements.
20:69:06:07	Auction sale procedure.
20:69:06:08	Auctioneer to maintain records.
20:69:06:09	Certain bids prohibited.
20:69:06:10	Rules applicable to real estate licensees.

20:69:06:01. Requirements for real estate auction. Real estate auctions may not begin until the announced and advertised time, date, and place of the sale. All efforts of selling shall cease at the end of the sale or at the time of the announcement of no sale.

Source: 5 SDR 12, effective August 14, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:12:00.01, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-27, 36-21A-30, 36-21A-47.

20:69:06:02. Auctioneers -- License required. A restricted broker's license, referred to in this chapter as an auctioneer's license, is required for any person not licensed as a real estate broker who is acting as a real estate auctioneer. A real estate salesperson or broker associate acting under the auspices and supervision of a licensed real estate broker may sell real estate at auction without an auctioneer's license. A real estate broker may obtain an auctioneer's license without examination.

Source: 1 SDR 33, effective January 1, 1975; 3 SDR 34, effective November 3, 1976; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:12:01, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.

General Authority: SDCL 36-21A-47, 36-21A-89(7).

Law Implemented: SDCL 36-21A-47, 36-21A-12.

20:69:06:03. Qualifications of applicants. An applicant for a real estate auctioneer's license, in addition to the other requirements in SDCL chapter 36-21A, shall furnish evidence of completion of 116 classroom hours within the two years before the date of application in a course on the principles and practices of real estate.

Source: 1 SDR 33, effective January 1, 1975; 2 SDR 7, effective July 30, 1975, and omitted as a temporary rule; readopted and transferred from § 20:56:12:08, 20 SDR 18, effective August 16,

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1993; 23 SDR 110, effective January 9, 1997; 29 SDR 48, effective October 10, 2002; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(7).

Law Implemented: SDCL 36-21A-89(7).

20:69:06:04. Duties of auctioneer. An auctioneer may list, advertise, show, and sell real property or business opportunities at auction only. An auctioneer may also close a real estate auction sale.

Source: 1 SDR 33, effective January 1, 1975; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:21, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001; 30 SDR 40, effective September 30, 2003.

General Authority: SDCL 36-21A-89(7).

Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-47.

20:69:06:05. Listings to be in writing. All contracts listing a property for sale with an auctioneer must be in writing. Each written listing agreement shall show the legal description of the property; the compensation to be received by the auctioneer; the date, time, and place of sale; the name of the attorney, bank, title company, or broker conducting the closing; and the signatures of all parties. At the time of securing the listing, the auctioneer who obtains it shall give the person or persons signing the listing a true copy of it. Auction listings terminate at the completion of the closing of the sale or if the seller doesn't receive an acceptable bid, at the culmination of bidding.

Source: 4 SDR 71, effective April 30, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:22, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 30 SDR 40, effective September 30, 2003.

General Authority: SDCL 36-21A-89(7).

Law Implemented: SDCL 36-21A-47, 36-21A-71.

20:69:06:06. Auction advertisements. Auction advertisements must disclose the names and types of licenses held by all licensees involved in the transaction.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-71, 36-21A-72, 36-21A-89.

20:69:06:07. Auction sale procedure. If property being sold by auction is put up in tracts, each tract is the subject of a separate sale. Such a sale is with reserve unless the real estate being sold is explicitly put up without reserve. In an auction with reserve the auctioneer may withdraw the real estate being offered for sale at any time until announcing completion of the sale. In an auction without reserve, the real estate being offered for sale may not be withdrawn after an auctioneer calls for bids unless no bid is made within a reasonable time. A bidder may retract a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid and notice has not been given that liberty for such bidding is reserved, the buyer may either avoid the sale or take the real estate at the price of the last good faith bid prior to the

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completion of the sale. A sale is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-72, 36-21A-89.

20:69:06:08. Auctioneer to maintain records. Auctioneers must maintain copies of all agreements, listing contracts, handbills, advertisements, closing statements, and other pertinent records for a period of four years. The records are subject to audit by the commission.

Source: 5 SDR 12, effective August 14, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:23, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-47, 36-21A-83.

20:69:06:09. Certain bids prohibited. An auctioneer may not knowingly receive or use "rafter bids" or "puffing" of bids. A "rafter bid" or "puffing" of bid means a fictitious bid.

Source: 5 SDR 12, effective August 14, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:24, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-27, 36-21A-47, 36-21A-68, 36-21A-71.

20:69:06:10. Rules applicable to real estate licensees. A real estate licensee acting as an auctioneer must follow the provisions of this chapter. Unless inconsistent with this chapter, a person licensed as an auctioneer must follow the provisions of chapter 20:69:03 and SDCL chapter 36-21A.

Source: 5 SDR 12, effective August 14, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:12:25, 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-1, 36-21A-6, 36-21A-27, 36-21A-30, 36-21A-47, 36-21A-68, 36-21A-71.

CHAPTER 20:69:07 CONDOMINIUMS

Section

20:69:07:01	Notice of intent to sell domestic condominium.
20:69:07:02	Rejection of filing.
20:69:07:03	Properly filed defined.
20:69:07:04	Inspection fee.
20:69:07:05	Rejection for insufficient funds check.
20:69:07:06	Deposit and expenditure of fees.
20:69:07:07	Public offering statement to accompany questionnaire.
20:69:07:08	Conversion condominiums.
20:69:07:09	Other information.
20:69:07:10	Waiver.

20:69:07:01. Notice of intent to sell domestic condominium. When a domestic condominium project is offered for sale in this state, the developer shall notify the commission in writing of the intention to sell the offering. The notice of intent must be on a form approved by the commission.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:08, August 16, 1993.

General Authority: SDCL 43-15A-30.

Law Implemented: SDCL 43-15A-10.

20:69:07:02. Rejection of filing. The commission may reject a filing that does not have the notice of intent to sell, does not have a questionnaire properly completed by the developer, or does not include the fee required in SDCL 43-15A-11 and § 20:69:07:04.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:11, August 16, 1993.

General Authority: SDCL 43-15A-30.

Law Implemented: SDCL 43-15A-11.

20:69:07:03. Properly filed defined. A notice of intent to sell is not properly filed until the commission has notified the developers in writing that all necessary requirements have been met.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:12, August 16, 1993.

General Authority: SDCL 43-15A-30.

Law Implemented: SDCL 43-15A-13.

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20:69:07:04. Inspection fee. An estimated inspection fee in the amount of \$100 for each \$300,000 value of the project must be included with the notice of intent.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:13, August 16, 1993; 23 SDR 110, effective January 9, 1997.

General Authority: SDCL 43-15A-30.

Law Implemented: SDCL 43-15A-14.

20:69:07:05. Rejection for insufficient funds check. The commission shall reject any notice of intent to sell if it is accompanied by an insufficient funds check for either the registration fee or inspection fee or both.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:14, August 16, 1993.

General Authority: SDCL 43-15A-30.

Law Implemented: SDCL 43-15A-11, 43-15A-14.

20:69:07:06. Deposit and expenditure of fees. The commission shall deposit the fees that it collects in the enforcement of SDCL 43-15A in the general fund of the commission and shall expend them to defray the costs of registration and inspection. The commission representative inspecting the project is entitled to a fee not to exceed \$75 per day and mileage in the amount of 35 cents per mile or actual reimbursement for first class transportation expenses. If the amount expended by the commission representative is greater than the estimated amount paid by the developer pursuant to § 20:69:07:04, the commission shall bill the developers for the excess amount. The excess amount must be paid immediately or the commission shall reject the notice of intention to sell.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:15, August 16, 1993.

General Authority: SDCL 43-15A-15.

Law Implemented: SDCL 43-15A-14, 43-15A-15.

20:69:07:07. Public offering statement to accompany questionnaire. A public offering statement (POS) shall accompany and be part of the questionnaire and must be in a form prescribed by the commission.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:17, August 16, 1993.

General Authority: SDCL 43-15A-30.

Law Implemented: SDCL 43-15A-2 to 43-15A-7, 43-15A-11, 43-15A-18 to 43-15A-25.

20:69:07:08. Conversion condominiums. The POS for conversion condominiums must conform in all aspects to the requirements of § 20:69:07:07 except that additional information as required by the commission must be incorporated.

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Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:18, August 16, 1993.

General Authority: SDCL 43-15A-30.

Law Implemented: SDCL 43-15A-2 to 43-15A-7, 43-15A-11, 43-15A-18 to 43-15A-25.

20:69:07:09. Other information. In order to facilitate its powers of inspection, the commission may require the submission of additional information. The failure to submit such additional information is grounds for the commission to reject the application.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:20, August 16, 1993.

General Authority: SDCL 43-15A-30.

Law Implemented: SDCL 43-15A-11, 43-15A-13, 43-15A-16 to 43-15A-18, 43-15A-26.

20:69:07:10. Waiver. The commission may waive any of the requirements of this chapter for good cause shown and may accept, at its discretion, registration forms used in another state.

Source: 3 SDR 34, effective November 3, 1976; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:13:21, August 16, 1993.

General Authority: SDCL 43-15A-30

Law Implemented: SDCL 43-15A-11.

CHAPTER 20:69:08 MORTGAGE BROKERS

Section

20:69:08:01	Definitions.
20:69:08:02 to 20:69:08:07	Repealed.
20:69:08:08	No advance fee.
20:69:08:09	Written contract required.
20:69:08:10	Full disclosure required.
20:69:08:11	Contents of mortgage loan disclosure statement.
20:69:08:12	Restrictions on chargeable costs and expenses.
20:69:08:13	Repealed.

20:69:08:01. Definitions. The term, lender, means a bank or trust company, savings bank, savings and loan association, insurance company, federal land bank, licensed mortgage broker or mortgage lender, or state or federal agency or its employees or any wholly owned subsidiary of any of the entities listed in this section.

Source: 4 SDR 71, effective April 30, 1978; 5 SDR 21, effective September 21, 1978; 7 SDR 13, effective October 6, 1980; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:01, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(8).

Law Implemented: SDCL 36-21A-1, 36-21A-47, 36-21A-89(8).

20:69:08:02. Persons to whom license law applicable. Repealed.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:17:03, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; repealed, 26 SDR 41 effective September 29, 1999.

20:69:08:03. Persons and organizations exempt from licensing. Repealed.

Source: 5 SDR 21, effective September 21, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:03.01, 20 SDR 18, effective August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:08:04. Mortgage brokers affiliated with a firm exempt from trust account requirements. Repealed.

Source: 4 SDR 71, effective April 30, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:09, 20 SDR 18, effective August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:08:05. Trust account requirements. Repealed.

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Source: 4 SDR 71, effective April 30, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:32, 20 SDR 18, effective August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:08:06. Office requirements. Repealed.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:17:33, 20 SDR 18, effective August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:08:07. Auditing. Repealed.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:17:34, 20 SDR 18, effective August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:08:08. No advance fee. A real estate broker acting as a mortgage broker may not accept compensation in advance from a potential borrower for the procurement of a loan.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:17:36, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(8).

Law Implemented: SDCL 36-21A-30, 36-21A-47, 36-21A-84.

20:69:08:09. Written contract required. Before a real estate broker performs any services for a potential borrower, the broker and the borrower must enter into a written contract specifying the duties and conditions under which the broker is to perform services. The contract must fully disclose estimated compensations and expenses and must have a definite expiration date.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:17:37, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(8).

Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:08:10. Full disclosure required. In all dealings between a borrower and a real estate broker, the broker shall fully and fairly inform the prospective borrower of all liabilities, costs, and other financial obligations that can or will be incurred by the borrower if the borrower uses the services of the broker.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:38, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(8).

Law Implemented: SDCL 36-21A-30, 36-21A-47.

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20:69:08:11. Contents of mortgage loan disclosure statement. When a real estate broker arranges a loan for a borrower, the following mortgage loan disclosure statement shall be prepared by the broker and the borrower:

- (1) Summary of loan terms:
 - (a) Principal amount of loan;
 - (b) Estimated deductions from principal amount:
 - (i) Costs and expenses;
 - (ii) Brokerage commission;
 - (iii) Liens and other amounts to be paid on authorization of borrower;
 - (c) Estimated cash payable to borrower;
- (2) General information concerning loans:
 - (a) The amount of principal and interest payable, the interest rate, the number of payments and whether they are monthly or quarterly, and whether there is a final or balloon payment to pay off the loan in full. If there is a balloon payment, the following cautionary instructions shall be printed in bold type on the contract: **CAUTION TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN DUE, IT MAY BE NECESSARY FOR YOU TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY FOR THIS PURPOSE AND YOU MAY BE REQUIRED AGAIN TO PAY COMMISSION AND EXPENSES FOR ARRANGING THE LOAN. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THE LOAN THAT YOU OBTAIN AT THIS TIME;**
 - (b) Other information necessary, including the land description, types of instruments to be executed, and type of lien that will be against the property if the instruments are executed;
 - (c) Any prepayment penalty and full disclosure of its terms;
 - (d) Whether credit life or credit disability will be required of the borrower as a condition of making the loan;
- (3) Deductions from loan proceeds:
 - (a) Estimated costs and expenses to be paid by the borrower out of the principal amount of the loan including appraisal fees, escrow fees, abstract or title insurance fees, notary fees, attorney fees, recording fees, credit investigation fees, and other costs and expenses;

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- (b) An estimate of the liens and other amounts to be paid out of the principal amount of the loan, on authorization of the borrower, including fire or other property insurance premiums, credit life or disability insurance premiums, beneficiary statement fees, reconveyance or similar fees, liens against property securing the loan, or other fees.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:17:39, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(8).

Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:08:12. Restrictions on chargeable costs and expenses. In addition to the initial written contract, the real estate broker shall give to the potential borrower an estimate of the amount of chargeable costs and expenses that will be collected by the broker in case no loan is found for the borrower. An estimated total cost to the borrower under these conditions shall be stated to the borrower and may not exceed the amount customarily charged for the same or comparable service in the community where the service was rendered. All of these costs and expenses, if actually expended and chargeable to the borrower, must have been actually and reasonably expended for the potential borrower's benefit.

Source: 4 SDR 71, effective April 30, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:40, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(8).

Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:08:13. Real estate law applicable. Repealed.

Source: 4 SDR 71, effective April 30, 1978; 5 SDR 21, effective September 21, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:17:41, 20 SDR 18, effective August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

CHAPTER 20:69:09
REAL ESTATE APPRAISERS
(Repealed. 23 SDR 110, effective January 9, 1997)

CHAPTER 20:69:10
STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

Section

20:69:10:01	Definitions.
20:69:10:02	Departure provision.
20:69:10:03	Standards for developing an appraisal.

20:69:10:01. Definitions. The following terms apply to this chapter:

- (1)"Analysis," the act or process of providing information, recommendations, or conclusions on diversified problems in real estate other than estimating value, for another and for compensation;
- (2)"Appraisal," the act or process of estimating value of real estate for another and for compensation;
- (3)"Cash flow analysis," an analysis of the anticipated movement of cash in or out of real estate;
- (4)"Feasibility analysis," an analysis of the cost-benefit relationship of an economic endeavor;
- (5)"Investment analysis," an analysis that reflects the relationship between acquisition price and anticipated future benefits of a real estate investment;
- (6)"Market analysis," an analysis of real estate market conditions for a specific type of property;
- (7)"Report," any communication, written or oral, of an appraisal, review, or analysis; and
- (8)"Review," the act or process of critically studying a report prepared by another, for another, and for compensation.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:18.01:01, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-89.

20:69:10:02. Departure provisions. An appraiser may enter into an agreement to perform an assignment that calls for something less than, or different from, the work that would otherwise be required by the specific guidelines if, before entering into such an agreement the appraiser has

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determined that the assignment to be performed is not so limited in scope that the resulting appraisal, review, or analysis would tend to mislead or confuse the client, the users of the report, or the public and the appraiser has advised the client that the assignment calls for something less than, or different from, the work required by the specific guidelines and therefore the report will include a qualification that reflects the limited or differing scope of the appraisal, review, or analysis.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:18.01:02, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-89.

20:69:10:03. Standards for developing an appraisal. In developing an appraisal, a broker or broker associate under a broker's supervision must be aware of, understand, and correctly employ the recognized methods and techniques as required by § 20:14:06:01.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:18.01:03, 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002; 30 SDR 40, effective September 30, 2003; 32 SDR 53, effective October 11, 2005; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-90.

Law Implemented: SDCL 36-21A-90.

CHAPTER 20:69:11 CONTINUING EDUCATION

Section

20:69:11:01	Continuing education defined.
20:69:11:01.01	Distance education defined.
20:69:11:01.02	Independent study defined.
20:69:11:01.03	Interactive defined.
20:69:11:01.04	Standards for distance education.
20:69:11:02	Continuing education required courses.
20:69:11:02.01	Postlicensing education defined.
20:69:11:02.02	Postlicensing education course requirements -- Time to complete.
20:69:11:03	Classroom hour.
20:69:11:03.01	Length of course.
20:69:11:04	Requirements -- Exceptions.
20:69:11:05	Exceptions and extensions.
20:69:11:06	Nonqualifying courses.
20:69:11:07	Criteria for postlicensing or continuing education course approval.
20:69:11:07.01	Criteria for distance education or independent study course approval.
20:69:11:08	Application for approval of classroom instruction -- Fee required.
20:69:11:08.01	Application for approval of distance education or independent study courses -- Fee required.
20:69:11:08.02	Additional requirements for distance education courses.
20:69:11:08.03	Student certification required.
20:69:11:08.04	Classroom, distance education, and independent study course application fees -- Postlicensing course as continuing education course subject to application fee.
20:69:11:09	Approval of out-of-state courses.
20:69:11:10	ARELLO certified courses approved for postlicensing or continuing education.
20:69:11:11	Certificate of approval.
20:69:11:11.01	Course accreditation renewal.
20:69:11:11.02	Course accreditation reinstatement.
20:69:11:12	Material change.
20:69:11:13	Denial of approval for a course or instructor.
20:69:11:13.01	Withdrawal of approval for a course or instructor.
20:69:11:14	Same or duplicate courses.
20:69:11:15 and 20:69:11:16	Repealed.
20:69:11:17	Facilities.
20:69:11:17.01	Schedule.
20:69:11:18	Auditing.
20:69:11:19	Postlicensing or continuing education certificate of attendance.
20:69:11:19.01	Course provider reporting requirements -- Course evaluation.
20:69:11:20	Preregistration allowed -- Notice of cancellation required.
20:69:11:21	Limit on independent study courses.
20:69:11:22	Instructors.
20:69:11:23	Application for approval of instructors -- Guest speakers exempt.

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20:69:11:24	Utilization of guest speakers -- Résumé to accompany course application.
20:69:11:25	Certificate of instructor approval -- Approval certificates not issued to guest speakers.

20:69:11:01. Continuing education defined. As used in this chapter, continuing education means accredited educational experience derived from a licensee's participation in approved lectures, seminars, or courses on real estate law, or in other related areas in real estate that have been approved by the commission, to maintain and improve the professional skills and upgrade the standard of all real estate licensees.

The commission considers courses in the following areas to be acceptable when considering approval:

- (1) Real estate ethics;
- (2) Legislative issues that influence real estate practice including both pending and recent legislation;
- (3) The administration of licensing provisions of real estate law and the administrative rules;
- (4) Real estate financing;
- (5) Real estate market measurement and evaluation, including site evaluations, market data, and feasibility studies;
- (6) Real estate brokerage;
- (7) Real estate mathematics;
- (8) Real property management;
- (9) Real property exchange;
- (10) Land use planning and zoning;
- (11) Real estate securities and syndication;
- (12) Estate building and portfolio management;
- (13) Accounting and taxation as applied to real property;
- (14) Land development;
- (15) Real estate appraising;

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- (16) Real estate marketing procedures;
- (17) The use of calculators or computers as applied to the practice of real estate;
- (18) Basic computer skills;
- (19) Fair housing;
- (20) Environmental issues;
- (21) Antitrust;
- (22) Home inspection; and
- (23) The Americans with Disabilities Act.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:01, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:01.01. Distance education defined. As used in this chapter, a distance education course is one in which instruction takes place in other than a traditional classroom setting, the instructor and student are in physically separate locations, and instructional methods include interactive video-based instruction, computer conferencing, interactive audio, interactive computer software, and internet-based instruction.

Source: 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-62.

20:69:11:01.02. Independent study defined. As used in this chapter, an independent study is a course in which no interaction with an instructor is planned or implied as part of the learning process.

Source: 25 SDR 90, effective December 28, 1998.

General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-62.

20:69:11:01.03. Interactive defined. As used in this chapter, interactive means the course structure and technologies promote active student involvement with the course content, including the ability to access or bypass optional content, submit questions or answer test items and receive direct feedback, and communicate with other students and the instructor on an immediate or reasonably delayed basis. Interactive instruction specifically excludes courses that only provide passive delivery of instructional content.

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Source: 25 SDR 90, effective December 28, 1998.

General Authority: SDCL 36-21A-63.

Law Implemented: SDCL 36-21A-63.

20:69:11:01.04. Standards for distance education. A distance education course must provide mastery of the material. The course must:

- (1) Divide the material into major learning units, each of which is further divided into modules of instruction;
- (2) Specify learning objectives for each learning unit or module of instruction. Learning objectives must be comprehensive enough to ensure that if all the objectives are met, the entire content of the course will be mastered;
- (3) Specify an objective, quantitative criterion for mastery used for each learning objective and provide a structured learning method designed to enable students to attain each objective;
- (4) Provide a means of diagnostic assessment of each student's performance on an ongoing basis during each module of instruction, including appropriate remediation where required; and
- (5) Require that the student demonstrate adequate comprehension of all material covered by the learning objectives for the module or unit before completing that module or unit.

Source: 25 SDR 90, effective December 28, 1998.

General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:02. Required courses. Twelve of the required 24 hours of continuing education must include study in real estate contracts, real estate license law, fair housing, ethics, environmental issues, antitrust, the American with Disabilities Act, brokerage services, or any combination of these subjects.

Source: 18 SDR 101, effective December 17, 1991; transferred from § 20:56:19:02.01, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 26 SDR 41, adopted September 29, 1999, effective January 1, 2000; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:02.01. Postlicensing education defined. As used in this chapter, postlicensing education means accredited education derived from a licensee's participation in approved lectures, seminars, or courses in topic areas prescribed by the commission, that builds on the basic real estate principles and practices acquired during the prelicensing education courses.

Source: 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.2.

Law Implemented: SDCL 36-21A-30.2.

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20:69:11:02.02. Postlicensing education course requirements -- Time to complete. The postlicensing education required of a broker associate shall include a minimum of six hours in each of the following areas:

- (1) Agency;
- (2) Contracts;
- (3) Fiduciary duties/trust accounting/earnest money;
- (4) Negotiation;
- (5) Business planning/etiquette;
- (6) Real estate license law;
- (7) Technology;
- (8) Marketing/advertising;
- (9) Ethics/professional liability; and
- (10) Property issues -- Inspections, disclosures, environmental.

Beginning with the third licensing period, broker associates must comply with the continuing education requirements pursuant to SDCL 36-21A-62.

Source: 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.2.

Law Implemented: SDCL 36-21A-30.2.

20:69:11:03. Classroom hour. A classroom hour is a period of at least 50 minutes of actual classroom instruction. Additional study assignments are not counted as hours of classroom instruction.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:03, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:03.01. Length of course. No more than eight hours of instruction may be offered in one day.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-62.

20:69:11:04. Requirements -- Exceptions. A licensee who has been licensed by the commission for one year or more preceding the date by which continuing education requirements must be completed must meet the continuing education requirements. A licensee whose license is on file in the commission's office on inactive status is not required to meet the requirements. A licensee on inactive status who wishes to activate the license must complete 24 hours of continuing education within the licensee's current licensing period or within two years preceding the licensee's current licensing period. The 24 hours of continuing education may not be used for both activating a license and renewing a license. A nonresident licensee licensed in this state is not required to meet this requirement. However, a nonresident licensee whose license in this state is on inactive status shall

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submit a certificate of licensure from the licensing agency of the state where the nonresident licensee maintains residency, stating the nonresident's license is on active status and in good standing and that no complaint is pending.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:04, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(3).

Law Implemented: SDCL 36-21A-65.

20:69:11:05. Exceptions and extensions. The commission may exempt a nonresident licensee from the continuing education requirements if the licensee meets the requirements of SDCL 36-21A-54 and § 20:69:03:22.01.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:05, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89, 36-21A-54.

Law Implemented: SDCL 36-21A-54.

20:69:11:06. Nonqualifying courses. The following courses do not qualify for postlicensing or continuing education purposes:

- (1) Courses in mechanical office and business skills, such as typing, keyboarding, speed-reading, memory improvement, language, and report writing;
- (2) Sales promotion or other meetings held in conjunction with a licensee's general business;
- (3) A course certified by the use of a challenge examination. All students must complete the required number of classroom hours to receive certification;
- (4) Meetings which are a normal part of the in-house staff or employee training;
- (5) Orientation courses for licensees, such as those offered through local real estate boards;
- (6) Development courses for instructors; and
- (7) Personal development or motivational courses.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:19:06, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.2, 36-21A-63.

Law Implemented: SDCL 36-21A-30.2, 36-21A-63.

20:69:11:07. Criteria for postlicensing or continuing education course approval. The commission may approve any course, seminar, conference, or equivalent that is provided by the commission, a public or private school, organization, association, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course, shall consider the following minimum criteria:

- (1) Courses must have a total instruction time of not less than three hours;

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- (2) A course provider must certify to the best of its knowledge the attendance of each student at the course. The course provider shall submit its criteria for measuring attendance in the application for course approval on a form provided by the commission;
- (3) The course provider shall maintain for a minimum of three years records of students successfully completing a course;
- (4) Credit must be earned on the basis of attendance or, in the case of independent study or distance education courses, completion of the course;
- (5) Each course of study may have a coordinator or administrator supervising the program. The coordinator must be qualified, either through previous education or experience, to administer a real estate course of study, to evaluate course content and instructors, and to analyze examinations; and
- (6) All instructors in a real estate course of study must file with the commission credentials showing the necessary specialized preparation, training, and experience to ensure competent instruction. The commission shall approve each instructor individually. Approval must be obtained from the commission before the instructor's lecture in an approved course of study. Instructors, lecturers, seminar leaders, and others who present a postlicensing or continuing education course must meet at least one of the following qualifications:
 - (a) A bachelor's, graduate, or postgraduate degree in the field in which the person is to teach;
 - (b) A valid teaching credential or certificate from South Dakota or another state authorizing the holder to teach in the field of instruction being offered;
 - (c) Five years' full-time experience in a professional, trade, or technical occupation in the applicable field;
 - (d) Any combination of at least five years of full-time applicable field experience and college level education; or
 - (e) Expertise in specialized courses as approved by the commission.

In addition to meeting at least one of the qualifications in (a) to (e), inclusive, an instructor seeking approval to teach real estate agency law specific to South Dakota must complete an approved training course.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:07, 20 SDR 18, effective August 16, 1993; 24 SDR 172, effective June 16, 1998; 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.2, 36-21A-63.

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Law Implemented: SDCL 36-21A-30.2, 36-21A-63, 36-21A-64.

20:69:11:07.01. Criteria for distance education or independent study course approval.

The commission may approve any course that is provided by the commission, a public or private school, organization, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course, shall consider the following minimum criteria:

- (1) The course provider must specify the learning objectives for each lesson and clearly demonstrate that the course covers the required subject matter. Objectives must be specific to ensure that all relative content is covered adequately to ensure mastery of the objectives;
- (2) The course provider must demonstrate that the course includes the same or reasonably similar informational content as a course that would otherwise qualify for the requisite number of hours of classroom-based instruction, and that students must proceed through and demonstrate comprehension of all the material;
- (3) If the course is a distance education course, it must include consistent and regular interactive events as appropriate to the medium. The interactive elements must be designed to promote student involvement in the learning process, and must directly support the student's achievement of the course's learning objectives. The course approval submission must identify the types of interactive events included in the course and specify how the interactive events contribute to the achievement of the stated learning objectives;
- (4) The course must require that the student demonstrate mastery of the learning objectives as designated for each lesson in order to successfully complete the lesson. The course must provide a mechanism of individual remediation to correct any deficiencies identified during the instruction and assessment process. In independent study courses, this remediation may be accomplished by quizzes or other exercises with detailed rationales in the answer key provided to students.
- (5) The course provider must measure, at regular intervals, the student's progress toward and completion of the mastery requirement of each lesson or module covering all the required subject matter. In the case of computer-based instruction, the course software must include automatic shutdown after a period of inactivity;
- (6) The applicant must demonstrate that approved instructors are available to answer student questions regarding course content at reasonable times and by reasonable means, including in-person contact, individual and conference telephone calls, E-mail, and fax. Communication by written postal correspondence alone is insufficient to satisfy the requirements of this subdivision.
- (7) The course provider shall provide reasonable security to ensure that the student who receives credit for the course is the student who enrolled in and completed the course. Both the school and the student must certify in writing that the student has successfully completed the course; and

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- (8) The course provider must require that the student pass an appropriate exam to successfully complete and receive credit. An examination will be considered appropriate if it contains at least five multiple-choice questions for each hour of credit and requires a minimum passing score of 80 percent.

Source: 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:08. Application for approval of classroom instruction -- Fee required. An application for approval of classroom instruction shall be on a form provided by the commission. The application must be filed with the commission at least 30 days before a course is offered and must be accompanied by an application fee pursuant to § 20:69:11:08.04. The application form shall include the following information and enclosures:

- (1) Name, address, and telephone number of the course provider;
- (2) The title of the course;
- (3) A complete description or copies of all materials to be distributed to the participants;
- (4) The date and exact location of each presentation of the course;
- (5) The duration and time of course;
- (6) A comprehensive, detailed outline of the subject matter together with course objectives, the time sequence of each segment, faculty for each segment, and teaching technique used in each segment;
- (7) The method of evaluation of the program;
- (8) The procedure for measuring attendance; and
- (9) A description of the faculty, including name, professional educational background, and practical or teaching experience. A complete résumé shall be furnished.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:19:08, 20 SDR 18, effective August 16, 1993; 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-63.

Law Implemented: SDCL 36-21A-63.

20:69:11:08.01. Application for approval of distance education or independent study courses -- Fee required. An application for approval of a distance education or independent study course shall be on a form provided by the commission and must be accompanied by an application fee pursuant to § 20:69:11:08.04. The application form shall include the following information and enclosures:

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- (1) Name, address, and telephone number of the course provider;
- (2) Course title;
- (3) The specific subject matter requirement met by the course;
- (4) The names of any instructor who will be available to answer student questions, the means of contact, and the hours of availability;
- (5) The overall structure, functioning, and administration of the proposed course;
- (6) A complete list of all lessons, modules, and learning objectives for each;
- (7) An explanation of the remediation process which is in effect to accomplish mastery of material when specific deficiencies are identified; and
- (8) A description of the procedures used to ensure exam security.

Source: 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-63.

Law Implemented: SDCL 36-21A-63.

20:69:11:08.02. Additional requirements for distance education courses. In addition to the requirements of § 20:69:11:08.01, an application for approval of a distance education course must include the following:

- (1) A complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the course material and an assessment of the availability and adequacy of the equipment, software, or other technologies to the achievement of the course's instructional claims; and
- (2) An explanation of how the course measures, documents, and records that the student has engaged in the required interactive exercises, achieved the required level of mastery, and spent the required amount of time completing the course and how the course provides protection against loss of student data due to hardware or software failure or against inadvertent loss by the student.

Source: 25 SDR 90, effective December 28, 1998.

General Authority: SDCL 36-21A-63.

Law Implemented: SDCL 36-21A-63.

20:69:11:08.03. Student certification required. Any school offering an approved distance education or independent study course must obtain from each student a certification statement substantially as follows: "I certify that I have personally completed each assigned module of instruction for this course without the assistance of any person other than my instructor and that all work represented as being mine is in fact my own work."

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Source: 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-63.

Law Implemented: SDCL 36-21A-63.

20:69:11:08.04. Classroom, distance education, and independent study course application fees -- Postlicensing course as continuing education course subject to application fee. Course application fees include the following:

	Continuing Education	Renewal
Classroom	\$ 75.00	\$50.00
Distance Education	150.00	50.00
Independent Study	75.00	50.00
ARELLO Certified	50.00	50.00
Seminar	15.00/hour	n/a

A postlicensing course offered as a continuing education course is subject to a continuing education course application fee as described in this section.

Source: 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.2, 36-21A-63.

Law Implemented: SDCL 36-21A-30.2, 36-21A-63, 36-21A-89(9).

20:69:11:09. Approval of out-of-state courses. If a South Dakota licensee enrolls in a continuing education course approved by another state's real estate regulatory agency, that course may be used to meet postlicensing or continuing education requirements in South Dakota.

Proof of the other state's approval and course completion are required before the credits are accepted by the commission.

Courses must meet content and length requirements consistent with § 20:69:11:01, 20:69:11:03.01, and 20:69:11:07.

Application for approval of the out-of-state course must be made to the commission on a form provided by the commission within 60 days after the date that the course was completed.

Source: 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:08.01, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.2, 36-21A-63.

Law Implemented: SDCL 36-21A-30.2, 36-21A-63.

20:69:11:10. ARELLO certified courses approved for postlicensing or continuing education. The commission may approve courses certified by the Association of Real Estate License Law Officials if appropriate documentation that the ARELLO certification is in effect and that the

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course meets the content requirements of § 20:69:11:01 is provided. Approval under this section shall cease if the ARELLO certification is discontinued.

Source: 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:08.02, 20 SDR 18, effective August 16, 1993; repealed, 21 SDR 125, effective January 23, 1995; readopted, 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.2, 36-21A-89(9).

Law Implemented: SDCL 36-21A-30.2, 36-21A-62.

20:69:11:11. Certificate of approval. The commission shall grant a certificate of approval for each course approved by the commission. The certificate remains valid for three years. A certificate of approval for a seminar course shall be valid for the duration of the seminar.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:09, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-63.

20:69:11:11.01. Course accreditation renewal. The course provider of a postlicensing or continuing education course must apply for renewal of the course prior to the date of expiration of the certificate of approval.

Source: 29 SDR 48, effective October 10, 2002; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.2, 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-30.2, 36-21A-63.

20:69:11:11.02. Course accreditation reinstatement. A course approval that has expired may be reinstated if a renewal application is filed within six months of the date of expiration. A course provider must file a new application for approval of a course that has been expired for more than six months.

Source: 29 SDR 48, effective October 10, 2002.

General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-63.

20:69:11:12. Material change. A course provider of each approved real estate course shall immediately notify the commission of any material changes contained in the application for approval or in the attached exhibits. A course provider may seek approval of a course subsequent to a course offering by submitting all information requested.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:12, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-62, 36-21A-63.

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20:69:11:13. Denial of approval for a course or instructor. The commission may deny approval of a real estate course or instructor if it is determined that either is not in compliance with SDCL chapter 36-21A and this article. A person aggrieved by denial of approval by the commission may file a written request for a hearing pursuant to § 20:69:02:07.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:13, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-63.

20:69:11:13.01. Withdrawal of approval for a course or instructor. If the commission at any time determines that a course or an instructor approved pursuant to chapter 20:69:11 is not continuing to meet the requirements of SDCL chapter 36-21A and this chapter, it shall immediately notify the course provider in writing detailing the deficiencies requiring correction. The approval by the commission shall continue 90 days from the date of the commission's written notice to the course provider, and if, at the expiration of that period, the course provider has failed to correct to the commission's satisfaction the deficiencies noted, the commission may withdraw approval of the course or instructor.

If the commission disciplines an instructor who holds a real estate license for acts committed as a licensee, the commission may also withdraw that instructor's approval as an instructor.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-63.

20:69:11:14. Same or duplicate courses. Credit for a course may be given only once to an individual during a reporting period.

Source: 5 SDR 12, effective August 21, 1978; 10 SDR 54, effective December 5, 1983; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:14, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-63.

Law Implemented: SDCL 36-21A-63.

20:69:11:15. School fees. Repealed.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:16, 20 SDR 18, effective August 16, 1993; repealed, 23 SDR 110, effective January 9, 1997.

20:69:11:16. Notice. At the beginning of each course, the course provider or instructor shall read the following notice to the students:

"This real estate continuing education course is recognized by the South Dakota Real Estate Commission as _____ hours of credit toward fulfilling the continuing real estate education

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requirements for real estate licensees pursuant to South Dakota law. Since it is the concern of the commission that licensees receive a quality education, the comments of each student will be appreciated. If you have any comments about this real estate course, your comments should be sent to the South Dakota Real Estate Commission, 118 West Capitol, Pierre, South Dakota 57501."

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:17, 20 SDR 18, effective August 16, 1993; 26 SDR 41, effective September 29, 1999; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-63.

20:69:11:17. Facilities. Each course provider must have the classrooms, facilities, equipment, and personnel necessary to implement the course.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:18, 20 SDR 18, effective August 16, 1993; repealed, 23 SDR 110, effective January 9, 1997; readopted, 25 SDR 90, effective December 28, 1998; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-63.

20:69:11:17.01. Schedule. The course provider shall provide a schedule of all courses, including the date, time, and place where they will be offered to the commission before the courses begin.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-63, 36-21A-89(9).

20:69:11:18. Auditing. The commission or its representatives may audit courses.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:19, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-63

20:69:11:19. Postlicensing or continuing education certificate of attendance. A course provider shall provide an individual certificate of attendance to each licensee upon completion of the approved course or seminar. The certificate must contain the licensee's name, the course title, the date, the location of the course, the number of approved credit hours, and the signature of the course sponsor or instructor. The licensee must retain the attendance certificate until the next license renewal period has been completed. No certificate of attendance may be issued to a licensee who is absent for more than ten percent of the classroom hours.

Source: 5 SDR 12, effective August 21, 1978; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:19:20, 20 SDR 18, effective

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August 16, 1993; 23 SDR 110, effective January 9, 1997; 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.2, 36-21A-89(9).

Law Implemented: SDCL 36-21A-30.2, 36-21A-62, 36-21A-63, 36-21A-64.

20:69:11:19.01. Course provider reporting requirements -- Course evaluation. The course provider must submit a list of participants to the commission within ten days after completion of a course. The course provider must provide a course evaluation form to each licensee for completion. The course provider must submit the completed course evaluations to the commission within ten days after completion of a course.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:20. Preregistration allowed -- Notice of cancellation required. A course provider offering approved continuing education courses may require preregistration with a cutoff date for permission to attend. The requirement must be advertised prior to each course. The course provider must notify registrants if the course is cancelled. The notification must be made at least 48 hours before the time of the beginning of the course.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:19:21, 20 SDR 18, effective August 16, 1993; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-89(9).

Law Implemented: SDCL 36-21A-62, 36-21A-63.

20:69:11:21. Limit on independent study courses. No more than six hours of independent study courses may be used in any one period to fulfill continuing education requirements.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:19:22, 20 SDR 18, effective August 16, 1993; 25 SDR 90, effective December 28, 1998; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-62, 36-21A-63, 36-21A-65.

20:69:11:22. Instructors. No instructor may teach postlicensing or continuing education courses unless approved, by name, by the commission. This section does not apply to guest speakers as provided for in § 20:69:11:24.

Source: 28 SDR 28, effective September 2, 2001; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-30.2, 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-30.2, 36-21A-62.

20:69:11:23. Application for approval of instructors -- Guest speakers exempt. An applicant for instructor approval shall apply on a form provided by the commission. A guest speaker is exempt from making application if requesting approval pursuant to § 20:69:11:24.

Source: 28 SDR 28, effective September 2, 2001.

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General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-62.

20:69:11:24. Utilization of guest speakers -- Résumé to accompany course application. A course provider may utilize guest speakers with expertise in a particular area in any approved course if an approved instructor is present at the time of the presentation. A course provider may utilize a guest speaker without an approved instructor being present with the prior written approval of the commission.

An application for approval of a course utilizing guest speakers must include a résumé of each speaker.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-62.

20:69:11:25. Certificate of instructor approval -- Approval certificates not issued to guest speakers. The commission shall grant a certificate of approval for each instructor approved by the commission. Certificates of approval will not be issued to guest speakers who make application pursuant to § 20:69:11:24.

Source: 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-63, 36-21A-89(9).

Law Implemented: SDCL 36-21A-62.

CHAPTER 20:69:12 TIME-SHARE ESTATES

Section

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20:69:12:01. Definitions. Terms used in this chapter mean:

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- (1) "Agent" or "time-share agent," a limited licensee licensed by the commission under chapter 20:56:21;
- (2) "Commission," the South Dakota Real Estate Commission;
- (3) "Developer," a person in the business of creating a time-share project or in the business of selling its own time-share in a project;
- (4) "Facility," a structure, service, or property, whether improved or unimproved, made available to the purchaser for recreational, social, family, or personal use;
- (5) "Invitee," an individual who is contacted and invited or encouraged to attend a time-share sales presentation;
- (6) "Material change," a change of circumstance that would make the information provided in the disclosure statement misleading to purchasers or that affects the rights and obligations of a purchaser or a prospective purchaser of a time-share unit, such as change in the nature of the time-share plan; change in the period of time usage of the unit; and change in terms and increase in the amounts of underlying encumbrances;
- (7) "Multiple location time-share plan," a time-share plan that includes time-share units located both in this state and in another state or country;
- (8) "Outside public contact" or "OPC," an individual who contacts invitees but does not engage in the sale of time-share interests or perform any other activity done by an agent;
- (9) "Preexisting time-share unit," a time-share unit in existence before July 1, 1983, in which the actual receipt of possession, occupancy, or right of use of the unit was obtained by the purchaser or user before July 1, 1983, evidenced by tenancy in common, sale, deed, membership agreement, lease, rental agreement, license, use agreement, or security; or a time-share unit which has been explicitly provided for in a project instrument or in a declaration or other instrument describing a time-share plan for a property and recorded in the state before July 1, 1983;
- (10) "Registrant," a developer, agent, or plan manager who is required to file with the commission;
- (11) "Responsible managing employee" or "RME," the individual employed by a registrant who is responsible for the direct management of the registrant's time-share units or time-share plans;
- (12) "State," the state of South Dakota;
- (13) "Supplementary disclosure statement," an amended disclosure statement filed when there has been a material change in the information provided in the original disclosure statement;

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- (14) "Time-share operation," a business or operation which, for compensation, solicits or encourages others to attend a time-share sales presentation or to contract with an agent or developer; creates a time-share plan; sells time-share units; sells or offers to sell an interest in a time-share plan for a developer; or undertakes the duties, responsibilities, and obligations of managing a time-share plan;
- (15) "Time-share unit," the time interval for right to use or occupy;
- (16) "Unit," the physical condominium or campground space.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:01, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 43-15B-1, 43-15B-3, 43-15B-6.

Cross-Reference: Limited time-sharing licenses, ch 20:69:13.

20:69:12:02. Registration of time-share estates. All applications for registration of time-share estates must be on forms approved by the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:20:02, August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-4.

20:69:12:03. Registration fee. Applications for registration must be accompanied by a fee of \$25 for each time-share unit. The total fee may not exceed \$1,000. The fee is payable in advance and must be made to the commission.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:03, August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 43-15B-4, 43-15B-6.

Law Implemented: SDCL 43-15B-4.

20:69:12:04. Inspection fee. The inspection fee required by SDCL 43-15B-5 including actual and necessary expenses shall accompany the application.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:04, August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-5, 43-15B-6.

20:69:12:05. Disclosure statement. An application for registration must include a disclosure statement.

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Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:05, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:06. Encouragement to read the disclosure statement. The following must be printed on the bottom half of the face page of the disclosure statement, in centered boldface capital letters:

THIS HANDBOOK IS PREPARED AND ISSUED BY THE DEVELOPER OF (RESORT NAME). THE DEVELOPER STRONGLY ENCOURAGES YOU TO REVIEW THIS HANDBOOK WHEN CONSIDERING THE PURCHASE OF A MEMBERSHIP.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:06, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:07. Additional disclosure statement requirements. In addition to the requirements prescribed in § 20:69:12:06, disclosure statements distributed to the public must meet the following requirements:

- (1) Provide a brief description of the method by which the time-share plan or units is to be offered;
- (2) Provide a description of the amount and types of units offered by the developer for the time-share plan; and
- (3) A summary of the developer's escrow agreement.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:07, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:08. Nonconforming disclosure statements. A disclosure statement not in conformance with the requirements of §§ 20:69:12:06 and 20:69:12:07 is void.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:12:08, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-2, 43-15B-3, 43-15B-6, 43-15B-7.

20:69:12:09. Offer, transfer, or disposal under a void statement. An offer, transfer, or disposal of a time-share unit or plan made under a void disclosure statement is voidable at the option of the purchaser.

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Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:09, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-2, 43-15B-3, 43-15B-6, 43-15B-7.

20:69:12:10. Additional filings required. In addition to the application, fees, and disclosure statement, a developer shall file the following with the commission to register a time-share project:

- (1) A financial statement not more than 90 days old prepared according to generally accepted accounting principles and certified by the developer or by a certified public accountant. If an audited financial report is filed, it must be the most current report and may not be more than 15 months old. A false or fraudulent financial statement submitted by the developer may be grounds for cancellation, suspension, or revocation of registration;
- (2) A policy of title insurance, a preliminary title report, abstract of title, or certificate of title not more than 90 days old at the time of filing of a time-share plan;
- (3) A certified copy of the articles of incorporation and bylaws, if a corporation, or a partnership registration if a partnership or joint venture at the time of filing a time-share plan;
- (4) A copy of a special escrow agreement as required in § 20:69:12:30;
- (5) The name and address of person in the state to receive service of process. Any change of name or address must be promptly reported to the commission.

The format for filing shall be prescribed by the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:10, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

Cross-Reference: Accounting principles, § 20:37:11:08.

20:69:12:11. Filing of option unacceptable. A developer who has only an option to purchase a property for a time-share plan may not file with the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:11, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-2, 43-15B-3, 43-15B-6, 43-15B-7.

20:69:12:12. Acquisition solicitation requirements for agents. An agent, including the developer if it is also the agent, may not solicit or encourage others to attend a time-share sales presentation or to contact an agent or developer if the time-share unit is located in the state, whether

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the solicitation is conducted in the state or out-of-state, unless the agent files and the commission accepts the following:

- (1) The time-share plan or plans for which it is providing prospective purchasers;
- (2) Its principal office address and telephone number; and
- (3) If a corporation, the name, address, and telephone number of its responsible managing employee.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:12, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:13. Sales solicitation requirements for agents. An agent, including the developer if it is also the agent, may not sell or offer to sell an interest in a time-share plan for a developer if the time-share unit is located in the state whether the sale or offer for sale is made in the state or out-of-state, unless the agent files and the commission accepts the following:

- (1) The time-share plan or plans it intends to sell;
- (2) Its principal office address and telephone number;
- (3) If a corporation, the name, address, and telephone number of its responsible managing employee; and
- (4) A copy of the special escrow agreement as required by § 20:69:12:28.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:13, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:14. Limitation on plan managers. A plan manager, including the developer if it is also the plan manager, may not undertake the duties, responsibilities, and obligations of managing a time-share plan if the time-share unit is located in the state unless the plan manager files and the commission accepts the following:

- (1) The time-share plan or plans that it intends to manage;
- (2) Its principal office address and telephone number;
- (3) If a corporation, the name, address, and telephone number of its responsible managing employee;
- (4) A sworn statement from the developer listing the plan manager's duties, responsibilities, and obligations;

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- (5) A sworn statement from the plan manager stating its duties, responsibilities, and obligations, as set out in § 20:69:12:19; and
- (6) The address where all accounting records, including receipts, expenditures, and payment vouchers, are maintained.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:14, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:15. Renewal of time-share filings. A filing required by this chapter shall be renewed by December 31 of each year on a form prescribed by the commission. Failure to renew by the specified date will result in forfeiture of the right to engage in the sale of a time-share plan. A forfeited registration may be restored within 90 days upon payment of a registration fee of \$25 for each time-share unit and meeting all of the renewal requirements. The registration fee shall accompany the renewal application. The fee for renewal may not exceed \$250. No sale or offer for sale of a time-share plan may be made until registration has been restored. A current financial statement is required for renewal in the same form as required in § 20:69:12:10.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:15, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-4, 43-15B-6.

20:69:12:16. Responsible managing employee -- Designation, duties, and change. The commission may not accept the filing of a corporate time-share agent or corporate plan manager unless the corporation has designated a responsible managing employee and prescribed the RME's duties, responsibilities, and obligations.

The corporate RME is responsible for the direct management of the corporation's time-share operations. The commission does not consider the corporate RME to have the direct management of the corporation's time-share operation unless the RME meets the following requirements:

- (1) Is a bona fide employee of the corporation and has direct control, supervision, and management of the corporation's time-share operations;
- (2) Has full knowledge and control of the corporation's accounting practices;
- (3) Has full knowledge and control over the moneys belonging to and in the custody of the corporation in connection with the time-share operation; and
- (4) Has full access to all books, records, and documents materially related to the corporation's part in the time-share operation whether they are kept in the state or out-of-state.

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The name, address, and telephone number of the RME must be filed with the commission. If there is a change in RME, the name of the new RME must be reported to the commission in writing within ten days after the change. A plan manager may manage one or more time-share plans. A plan manager may have one or more RMEs. If a developer or plan manager of two or more time-share plans, at least one of which includes time-share units located in this state, maintains its principal office or has primary management and accounting functions out-of-state, the duties of the RME specified in this section may be divided between two or more RMEs provided that at least one RME is located in the state.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:16, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-2, 43-15B-3, 43-15B-6.

20:69:12:17. Copy of disclosure statement to be given to prospective purchasers. A registrant or other person attempting to sell a time-share estate or plan shall provide to prospective purchasers a copy of the disclosure statement which is a true, accurate, and complete reproduction of the statement filed and accepted by the commission. The registrant or other person attempting to sell a time-share plan or estate shall give the prospective purchaser an opportunity to read the statement.

Prospective purchasers receiving a copy of the disclosure statement shall sign a statement acknowledging receipt of the disclosure statement on a receipt form prescribed by the commission. The receipt must be kept at the principal office of the developer for a period of two years from the date of the receipt and is subject to inspection upon notice by the commission or the commission's representative. If the principal office is not located in this state, the developer is subject to the out-of-state inspection requirements of § 20:69:12:19.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:17, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:18. Issuance of registration number. The commission shall issue a registration number to a time-share plan in consecutive order of receipt of filing provided that the filing complies with the requirements of this chapter. The commission shall print the registration number and the date of acceptance on the upper right-hand corner of the face page of the disclosure statement.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:18, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:19. Plan manager or RME designated for time-share unit or time-share plan located in the state. All time-share plans must have a plan manager or an RME designated.

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There must be a plan manager or an RME in the state if a time-share unit or time-share plan is located in the state whether or not a time-share unit or time-share plan is offered for sale in the state or out-of-state.

There must be a plan manager or an RME in the state for a multiple location time-share plan if the plan includes a time-share unit or time-share plan located in the state.

A plan manager's duties, responsibilities, and obligations include the following:

- (1) Management and maintenance of the time-share units;
- (2) Assessments and the collection of maintenance fees;
- (3) Payment of real property taxes due on the time-share units under the plan manager's authority;
- (4) Supervision of the occupancy scheduling so that time-share unit owners or users will be provided the use of time-share units;
- (5) Provision to time-share owners and users of a copy of the house rules of the building;
- (6) Supervision of the enforcement of the house rules; and
- (7) The keeping of a detailed and accurate record, in chronological order, of receipts and expenditures.

All accounting records of the plan manager are subject to inspection by the commission or the commission's representative. Accounting records must be kept at the principal office of the plan manager, which may be located in this state or in another state.

If the accounting records are not kept in this state, they shall be made available for inspection in this state upon notice. If the records are not made available, they shall be inspected at the place where they are kept and all costs, including the travel expense, per diem, and salary of the inspector, must be borne by the plan manager. The commission may require the plan manager to remit the amount of the estimated cost in advance of the inspection. Failure on the part of the plan manager to comply with the commission's request to remit the amount of the estimated cost may be grounds for cancellation, suspension, or revocation of registration of the project.

If the principal office of the developer is not in the state, a failure to make available upon the commission's request bookkeeping records, computer records, or any other records of the developer on the time-share plan may be grounds for cancellation, suspension, or revocation of the plan manager's registration.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:20, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-4, 43-15B-5, 43-15B-6.

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20:69:12:20. Material change in disclosure statement. A developer shall notify the commission in writing of any material changes in the disclosure statement.

A developer shall file a supplemental disclosure statement which specifies, in detail, the material changes that have occurred.

The supplemental disclosure statement must be filed with the commission within 20 days after the material changes become known to the developer.

Upon acceptance of the supplemental disclosure statement by the commission, a true, accurate, and complete copy of the supplemental disclosure statement must be given to each purchaser adversely affected by the material change and to each prospective purchaser. A receipt from each purchaser and prospective purchaser must be taken and filed as required in § 20:69:12:17. The developer is not in violation of this chapter if the purchaser fails to return the receipt and the developer can verify that a statement was sent to the purchaser.

The commission may independently determine that a material change has occurred and require the developer to prepare a supplemental disclosure statement disclosing the material change in a form approved by the commission.

If the purchaser has received title by instrument of record in the sale of an interest in an ownership plan, the developer is not required to give the purchaser a supplemental disclosure statement.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:21, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:21. Mutual right to cancel contract. A developer or purchaser may cancel a contract by giving the other party written notice within seven calendar days after execution of the contract or after the purchaser's receipt of a disclosure statement, whichever occurs later.

The purchaser is entitled to a refund of all sums paid within 30 days after notice of cancellation if all materials received on the date of sale are returned to a specified address of the seller or within 60 days if all sales materials are not returned.

A developer or agent shall furnish each purchaser at the time the contract for purchase of a membership is signed the following cancellation notice prepared exactly as follows:

NOTICE TO BUYER: YOU OR THE DEVELOPER MAY CANCEL THIS TRANSACTION WITHIN SEVEN (7) CALENDAR DAYS AFTER THE EXECUTION OF THE CONTRACT OR AFTER YOUR RECEIPT OF THE DISCLOSURE STATEMENT, WHICHEVER OCCURS LATER. YOU ARE ENTITLED TO A REFUND OF ALL SUMS YOU PAID WITHIN 30 DAYS AFTER NOTICE OF CANCELLATION WHEN ALL MATERIALS RECEIVED ON THE DATE OF SALE ARE RETURNED TO THE ADDRESS STATED BELOW OR WITHIN 60 DAYS IF ALL SALES MATERIALS ARE NOT RETURNED. TO

CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED WRITTEN CANCELLATION NOTICE TO:

(Insert name and address of developer)

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:20:22, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:22. Retention of copy of contract. A copy of a contract from each sale of a time-share plan must be retained by the developer for a period of at least one year after the parties to the time-share plan have completely performed all of their obligations.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:23, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:23. Preexisting time-share unit. Preexisting time-share units and time-share plans for preexisting time-share units must comply with the requirements of this chapter and the provisions of SDCL 43-15B by January 1, 1985.

Time-share units not existing by July 1, 1983, are subject to this chapter when it takes effect.

A developer, agent, or plan manager shall submit evidence, such as an agreement, contract, or document, at the time of filing of a preexisting time-share plan to show that a time-share unit or plan was created prior to July 1, 1983.

Preexisting time-share plans must be filed on a form prescribed by the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:24, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:24. Persons responsible for filing of preexisting time-share plan. In addition to the requirements of this chapter, a developer, agent, or plan manager presently associated with a preexisting time-share plan shall file at the time of filing of a preexisting time-share plan a certified statement giving the location of the preexisting time-share unit and time-share plan, the number of time-share units, the nature of the ownership of the units, the ownership or use period, the date, and an explanation of how the time-share plan was created, the number of purchasers who purchased time-share plans, and the name and address of the plan manager.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:25, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:25. Plan manager for preexisting time-share plan. A preexisting time-share plan must have a plan manager. Any provision relating to a plan manager in this chapter is applicable to a plan manager of a preexisting time-share plan.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:26, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:26. Mixed-use project containing existing time-share unit or plan. Additional time-share units may not be created in a mixed-use project containing an existing time-share unit or time-share plan and a residential unit unless the project is located in a hotel or in a place designated for hotel use, resort use, or transient vacation rentals and all of the requirements of this chapter relating to time-share use are met.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:27, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:27. Law and rules to be available. A developer or agent must comply with the following:

- (1) Have a copy of SDCL 43-15B and a copy of this chapter available for inspection by any prospective purchaser;
- (2) Advise each prospective purchaser that copies are available at the time any interest in a time-share plan is offered for sale in this state or out-of-state; and
- (3) Provide copies upon request.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:28, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:28. Agent and special escrow account. An agent shall establish and maintain a special escrow account in a federally insured depository in this state for the deposit of any moneys received from the purchaser. A special escrow account with a federally insured depository doing business in another state may be established upon approval by the commission; but if all sales are conducted in this state, a special escrow account must be established and maintained in this state.

The escrow agreement shall provide that no moneys received from a purchaser may be disbursed until after the expiration of the seven-day period in which a purchaser may rescind the contract. The agreement shall include a statement on the method of disbursement of funds in escrow.

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Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:20:29, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:29. Plan manager and special account. A plan manager shall establish and maintain a special account in a bank or trust company in this state for the deposit of any moneys received. A special account with a bank or trust company doing business in another state may be established upon approval by the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:30, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:30. Developer and special escrow account. A developer shall establish and maintain a special escrow account with a bank, licensed escrow company, or a trust company in this state. A special escrow account with a bank, licensed escrow company, or trust company doing business in another state may be established upon approval by the commission.

The developer shall place in the special escrow account all funds, except those excluded by § 20:69:12:33, paid by the purchasers of time-share ownership or use plans or submit to the commission for approval a financial plan for the protection of the purchasers.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:31, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:31. Developer's escrow agreement when funds deposited. If a developer elects to place in the special escrow account all funds, except those excluded by § 20:69:12:33, the escrow agreement must provide for the following:

- (1) The purchaser's right to refund at any time the time-share units or facilities are no longer available as provided in the contract in an amount which represents the purchaser's pro rata share of the moneys in the escrow account;
- (2) If a deed, title, or assignment of lease of the time-share plan free and clear of any liens is transferred to the benefit of the purchaser, withdrawal by the developer of all of the funds which have been placed in escrow on behalf of the purchaser;
- (3) If a deed, title, or assignment of lease of the time-share plan free and clear of any liens is not transferred to the benefit of the purchaser, withdrawal by the developer of a proportion of the moneys placed in escrow which is in the ratio of the time made available to the purchaser in relation to the total amount of time which the purchaser has a right to use under the contract.

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Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:32, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

Example:

Examples for subdivision (3):

- (1) If the total time available to a time-share plan purchaser under the purchaser's plan is 100 days and in a given year the purchaser uses 10 of those days, the time-share plan seller that year may withdraw one-tenth of the moneys placed in escrow for the purchaser.
- (2) If the time-share purchaser is entitled to 10 days a year and it is a 40-year plan, the time share seller may withdraw each year one-fortieth of the moneys placed in escrow for the purchaser.

20:69:12:32. Developer's escrow agreement when financial plan submitted. If a developer elects to submit a financial plan for protection of the purchasers to the commission for approval, the developer shall furnish the commission a certified statement of a summary of all underlying financial obligations of the time-share plan, including agreements of sale, leases, mortgages, liens, and a projected payment plan which provides for payment in full of all underlying financial obligations before the final receipts from the purchasers of their payments; a description of the source of means by which such payments will be made; and a description of arrangements with banks, licensed escrow companies, trust companies or lending institutions relating to the receipt of purchaser's moneys and disbursements on account of the payment plan.

The developer shall submit an escrow agreement which provides for the following:

- (1) The purchaser's right to refund at any time the time-share units or facilities are no longer available as provided in the contract in an amount which represents the purchaser's pro rata share of the moneys in the escrow account;
- (2) Deposit of all funds, except those excluded by § 20:69:12:33 paid by the purchasers of the time-share ownership or use plan in the special escrow account;
- (3) Payment in full of all underlying financial obligations of the time-share plan before the final receipts from the purchasers of their payments;
- (4) Modification of the payment plan with the approval of the commission upon change of circumstances. However, any payment plan must provide for payment in full of all underlying obligations before the final receipts from the purchasers of their payments, and no additional encumbrances may be placed on any property subject to the time-share plan without the approval of the commission;
- (5) Collection of funds and making of disbursements by the bank, escrow company, or trust company according to the payment plan submitted to the commission by the developer;

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- (6) After payment of the underlying financial obligations, any interests in the time-share property must be conveyed to the purchaser in an ownership plan and in a use plan. The developer shall convey to a disinterested third party, such as a nonprofit corporation or club or trust company, an interest in the property necessary to ensure the use of the property for the period of time conveyed by the developer in the time-share plan; and
- (7) Approval by the commission of an amendment to the escrow agreement.

A developer must have the holders of the underlying financial obligations submit to the commission annually statements of balances owing on the underlying financial obligations.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:33, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:33. Exclusions from funds placed in escrow. Purchaser's funds to be placed in an escrow account need not include operational expenses, such as office expenses and sales commissions, maid services, telephone charges, special assessments, club dues, and maintenance fees.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:34, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:34. Integrated special escrow account. If a developer also performs the function of plan manager and sales agent, it may establish and maintain a single special escrow account in a bank, licensed escrow company, or trust company for the deposit of any moneys received from purchasers.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:35, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

20:69:12:35. Account open for inspection. A developer, agent, or plan manager shall provide information on the developer's, agent's, or plan manager's respective account to the commission upon written request. The account is subject to inspection upon notice by the commission or commission's representative. If the accounting records are not kept in this state, provisions on inspections and production of records in § 20:69:12:19 of these rules are applicable.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:36, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-3, 43-15B-6.

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20:69:12:36. Unprofessional conduct. A developer or agent of time-share plans or units may not do any of the following:

- (1) Use a promotional device without fully disclosing that the device is being used for the purpose of soliciting sales of time-share plans or units;
- (2) Misrepresent or deceptively represent a material fact concerning the time-share plans or time-share units, including the following:
 - (a) The amount or period of time the units and facilities will be available to a purchaser;
 - (b) The location or locations of the offered units and facilities;
 - (c) The size, nature, or characteristics of the offered units and facilities;
 - (d) The rights of a purchaser, if any, to exchange the purchaser's rights to units in one location for rights to units in another location; and
 - (e) The contents of the contract or the purchaser's rights, privileges, or benefits under the contract;
- (3) Fail to honor or comply with all provisions of the contract with the purchaser; and
- (4) Include, in any contract, provisions purporting to waive a right or benefit provided for purchases pursuant to law.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:20:38, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 36-21A-71, 43-15B-3, 43-15B-6.

20:69:12:37. Cause for suspension or revocation. The commission may suspend or revoke a registration by a developer, agent, or plan manager for violation by the registrant or its employees of any of the provisions of this chapter, chapter 20:69:13, or SDCL 43-15B after a hearing conducted pursuant to SDCL 1-26.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:20:39, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 43-15B-2, 43-15B-3, 43-15B-6.

CHAPTER 20:69:13 TIME-SHARE AGENTS

Section

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20:69:13:01. Definition of time-share agent. A time-share agent is a person who works for another person for compensation and performs at least one of the following functions:

- (1) Directly or indirectly lists, sells, exchanges, buys, rents, manages, offers, or attempts to negotiate a sale, option, exchange, purchase, lease, or rental of an interest or use in a time-share estate;
- (2) Advertises as engaging in or holds out to be engaged in any of the activities listed in subdivision (1) of this section; or
- (3) Directly or indirectly negotiates, offers, or attempts to negotiate a loan or financing for the purchase of a time-share estate.

Source: 10 SDR 121, adopted May 17, 1984, retroactively effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:00, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-6, 36-21A-47, 43-15B-6, 43-15B-7.

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20:69:13:02. Time-share agents -- License required. Persons who act as time-share agents within this state must be licensed according to this chapter and must comply with the provisions of this chapter.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:01, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:03. OPC exempt from licensing. An outside public contact is exempt from licensing under this chapter.

Source: 10 SDR 121, adopted May 17, 1984, retroactively effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:01.01, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-6, 36-21A-47, 43-15B-6, 43-15B-7.

Cross-Reference: Definitions, § 20:69:12:01(8).

20:69:13:04. Persons and organizations exempt from licensing or examination. Real estate brokers are exempt from licensing under this chapter. A real estate broker or salesperson may obtain a time-share license without examination.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:02, August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 43-15B-6.

Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:05. Application. An applicant for a time-share agent's license shall file an application on a form provided by the commission.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:03, August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(2), 43-15B-6.

Law Implemented: SDCL 36-21A-30, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:06. Application fee. The application fee for a time-share agent's license is \$225.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 16 SDR 36, effective August 29, 1989; transferred from § 20:56:21:05, August 16, 1993; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.

General Authority: SDCL 36-21A-49, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 36-21A-49, 43-15B-6, 43-15B-7.

20:69:13:07. Photograph to accompany application. Repealed.

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Source: 10 SDR 68, effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:06, August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:13:08. Grounds for denial of license. The commission may deny an application for a license or a renewal of a license on any of the following grounds:

- (1) The applicant has previously been convicted of a felony or of a misdemeanor involving moral turpitude;
- (2) The applicant has failed the examination prescribed by the commission;
- (3) The applicant has written insufficient funds checks for application or renewal fees;
- (4) The applicant has been disciplined for unprofessional conduct by any regulatory agency anywhere within the United States in relation to the applicant's activities as a real estate salesperson or broker or as a time-share agent or broker or similar licensee;
- (5) Misstatements, intentional omissions, misrepresentations, or untruths in any application, registration statement, or renewal application.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:07, August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(2), 43-15B-6.

Law Implemented: SDCL 36-21A-30, 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:09. Examination. Any person, not otherwise exempted by this chapter, who meets the qualifications of this chapter must pass an examination for a time-share agent's license to be given by the commission at a time, place, and in a manner established by the commission. The commission shall determine the contents of the examination and the rating and standards for passing. A passing grade of 75 is required.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:08, August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(2), 36-21A-47, 43-15B-6.

Law Implemented: SDCL 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:10. Authorization to take examination. A person may not take the time-share agent's examination unless authorized by the commission in writing to take the examination.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:09, August 16, 1993; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(2), 43-15B-6.

Law Implemented: SDCL 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

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20:69:13:11. Failure to appear for examination. Repealed.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:10, August 16, 1993; repealed, 26 SDR 41, effective September 29, 1999.

20:69:13:12. Administration of examination. The licensing examination must be conducted under the supervision of the executive director of the commission or a designee of the executive director. Identification supplied to the applicant by the commission is required for admission to the examination room. Before beginning the examination, the applicant must certify in writing that the applicant has not solicited or received any information about the contents of the examination about to be written and that during or subsequent to the examination the applicant will not disclose its contents to any person.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:11, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:13. Cheating on examination. The examination of an applicant for a time-share agent's license who is caught cheating during the examination must be declared void.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:12, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:14. Results of examination. The applicant must be notified in writing of the examination results.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:13, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-36, 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:14.01. Rights to passing score. Upon notification that a person has passed the time-share examination, a person has 60 days to apply for a time-share agent's license, or the passing score is forfeited.

Source: 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-89(2), 43-15B-6.

Law Implemented: SDCL 36-21A-89(2), 43-15B-6.

20:69:13:15. Biennial renewal fee. The biennial renewal fee for a time-share agent's license is \$125.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 31, effective September 23, 1986, effective

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January 1, 1988; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:16, August 16, 1993; 26 SDR 41, effective September 29, 1999; 29 SDR 48, effective October 10, 2002.

General Authority: SDCL 36-21A-61, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 36-21A-61, 43-15B-6, 43-15B-7.

20:69:13:16. Cancellation of license upon failure to pay fee. Failure to remit the renewal fee or registration statement or both by the registration deadline automatically cancels the license of a time-share agent. In addition, if an insufficient funds check is presented to the commission for payment of the renewal fee, the commission may cancel the license of the time-share agent.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:17, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 36-21A-61, 43-15B-6, 43-15B-7.

20:69:13:17. Replacement of license and change of address. If an original license or certificate of renewal was lost, misplaced, stolen, or destroyed, the licensee shall report that fact to the commission in writing. Upon the commission's receipt of the statement by the licensee, the commission may issue a duplicate license or certificate of renewal. Fees for duplicate licenses, for licenses for each additional office, or for change of address are the same as those set forth in SDCL 36-21A-60 for real estate brokers.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 101, effective December 17, 1991; transferred from § 20:56:21:19, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:18. Trust account requirements. All the requirements relating to trust accounts imposed by SDCL Chapter 36-21A or Article 20:69 upon real estate agents apply to time-share agents.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:20, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

Cross-References:

Handling of money received by broker for principal, SDCL 36-21A-80.

Deposit slip and ledger sheet for special trust account, SDCL 36-21A-82.

Documents kept by broker remitting immediately to principal, SDCL 36-21A-83.

Completed transaction required for compensation of broker, SDCL 36-21A-84.

Acts constituting unprofessional conduct, SDCL 36-21A-71(5).

20:69:13:19. Office requirements. A time-share agent must have an office physically located in the state of South Dakota before transacting any sales of real estate located in the state of South Dakota.

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Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:21, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 36-21A-51, 43-15B-6, 43-15B-7.

20:69:13:20. Auditing. The time-share agent must maintain all records of all sales transactions made within this state at the office required by § 20:69:13:19, and these records are subject to audit by the commission or its agents.

Source: 10 SDR 68, effective January 1, 1984; 12 SDR 102, effective December 22, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:22, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:21. Real estate law applicable. Unless inconsistent with this chapter and chapter 20:69:12, the real estate law contained in SDCL Chapter 36-21A and Article 20:69 applies to time-share agents.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:56:21:24, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

20:69:13:22. Supervising agent. A developer must designate a real estate broker or time-share agent licensed in South Dakota as the supervising agent who has general superintending control over all time-share agents employed in South Dakota by that person. The supervising agent is also responsible for the actions of all outside public contacts who are employed by the principal or by the supervising agent.

Source: 10 SDR 68, effective January 1, 1984; 10 SDR 121, amended May 17, 1984, retroactively effective January 1, 1984; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 15 SDR 100, effective January 10, 1989; transferred from § 20:56:21:25, August 16, 1993.

General Authority: SDCL 36-21A-89, 43-15B-6.

Law Implemented: SDCL 36-21A-47, 43-15B-6, 43-15B-7.

Cross-Reference: Definitions, § 20:69:12:01(3).

CHAPTER 20:69:14 PROPERTY MANAGERS

Section

20:69:14:01	Property manager license.
20:69:14:02	Persons to whom license law applicable.
20:69:14:02.01	Qualifications of applicants.
20:69:14:03	Exemptions from examination.
20:69:14:04	Trust account requirements.
20:69:14:05	Auditing.
20:69:14:06	Contracts to be in writing.
20:69:14:07	Full disclosure required.
20:69:14:08	Real estate law applicable.
20:69:14:09	Powers of commission in disciplinary matters.
20:69:14:10	Broker subject to chapter.
20:69:14:11	Financial obligations and records.
20:69:14:12	Property management accounting.

20:69:14:01. Property manager license. The property manager license is a restricted broker's license pursuant to SDCL 36-21A-47.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:02, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-47.

Law Implemented: SDCL 36-21A-47.

20:69:14:02. Persons to whom license law applicable. A person may not act as a property manager in this state unless the person holds a property manager license pursuant to this chapter or otherwise complies with the provisions of this chapter. Individuals must be licensed as individual property managers. Partnerships, associations, or corporations must be licensed as firms.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:03, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-47.

Law Implemented: SDCL 36-21A-27, 36-21A-28, 36-21A-37, 36-21A-38, 36-21A-47.

Cross-Reference:

Persons and entities exempted from this chapter, SDCL 36-21A-29.

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20:69:14:02.01. Qualifications of applicants. An applicant for a property manager's license, in addition to the other requirements in SDCL chapter 36-21A, shall furnish evidence of completion of 40 hours of education within the two years before the date of application in a course on the fundamentals of property management.

Source: 23 SDR 110, effective January 9, 1997; 28 SDR 28, effective September 2, 2001.

General Authority: SDCL 36-21A-47, 36-21A-89.

Law Implemented: SDCL 36-21A-47.

20:69:14:03. Exemptions from examination. A real estate broker may obtain a property manager license without an examination. A broker associate may manage property independently of a responsible broker if the broker associate has fulfilled the education and experience requirements of SDCL 36-21A-31.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:04, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997; 26 SDR 41, effective September 29, 1999.

General Authority: SDCL 36-21A-47.

Law Implemented: SDCL 36-21A-6, 36-21A-47.

Cross-References: Broker defined, SDCL 36-21A-6.

20:69:14:04. Trust account requirements. All of the requirements relating to trust accounts imposed by SDCL Chapter 36-21A or this article on real estate brokers apply to property managers.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:29, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-47, 36-21A-80, 36-21A-82.

Cross-References:

Handling of money received by broker for principal, SDCL 36-21A-80.

Deposit slip and ledger sheet for special trust account, SDCL 36-21A-82.

Acts constituting unprofessional conduct, SDCL 36-21A-71(5).

Financial obligations and records, § 20:69:14:11.

20:69:14:05. Auditing. The property manager must maintain all records of all South Dakota transactions at the property manager's office. These records are subject to audit by the commission or its agents.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:30, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:14:06. Contracts to be in writing. Before a property manager performs any services, the property manager and client must enter into a written management agreement specifying the duties and conditions under which the property manager is to perform services. A management

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agreement may include a provision for automatic renewal at expiration if it contains a provision for written cancellation on terms agreeable to all parties to the agreement.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:31, 20 SDR 18, effective August 16, 1993; 23 SDR 110, effective January 9, 1997.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-30, 36-21A-47.

20:69:14:07. Full disclosure required. In all dealings between a client and property manager, the property manager must inform the client of all liabilities, costs, and other financial obligations that may be incurred by the client if the client uses the services of the property manager.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:32, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-47.

20:69:14:08. Real estate law applicable. Unless inconsistent with this chapter, the real estate law contained in SDCL Chapter 36-21A and this article applies to property managers.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:33, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-47.

20:69:14:09. Powers of commission in disciplinary matters. The commission shall discipline a property manager in the same manner as it disciplines a licensed real estate broker or salesperson.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:34, 20 SDR 18, effective August 16, 1993; 35 SDR 305, effective July 1, 2009.

General Authority: SDCL 36-21A-89(5).

Law Implemented: SDCL 36-21A-47, 36-21A-68.

Cross-References:

Acts constituting unprofessional conduct, SDCL 36-21A-71.

Procedure on revocation -- Appeal, SDCL 36-21A-86.

Disciplinary proceedings, chapter 20:69:05.

20:69:14:10. Broker subject to chapter. A real estate broker who acts as a property manager is subject to the provisions of this chapter.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:35, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-47, 36-21A-71.

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20:69:14:11. Financial obligations and records. A property manager must deposit all security deposits, damage deposits, advance fees, and rental proceeds received in a federally insured financial institution and must make a full accounting to the client. Rental proceeds must be disbursed pursuant to the contract between the property manager and owner. Records related to the receipt, deposit, maintenance, and withdrawal of the funds must be maintained for four years following the termination of a management contract.

Source: 15 SDR 100, effective January 10, 1989; transferred from § 20:56:22:36, 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-47, 36-21A-80, 36-21A-82.

Cross-References:

Amount of deposit, SDCL 43-32-6.1.

Return of deposit, SDCL 43-32-24.

Handling of money, SDCL 36-21A-88.

20:69:14:12. Property management accounting. A property manager shall prepare and maintain a receipts and disbursements journal or a check register for each trust account. Tenant security deposits must be maintained as a separate balance in the owner's ledger or in a tenant ledger account. Receipts and disbursements must be posted at least once each month, and all trust accounts must be reconciled at least once each month. Prenumbered receipt documents must be completed for any currency received by the property manager which belongs to a principal.

Source: 18 SDR 101, effective December 17, 1991; transferred from § 20:56:22:37, 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995; 23 SDR 110, effective January 9, 1997.

General Authority: SDCL 36-21A-89.

Law Implemented: SDCL 36-21A-47, 36-21A-71.

CHAPTER 20:69:14.01 RESIDENTIAL RENTAL AGENT

Section

- 20:69:14.01:01 Residential rental agent license.
- 20:69:14.01:02 Persons to whom license law applicable.
- 20:69:14.01:03 Application for license.
- 20:69:14.01:04 Application fee.
- 20:69:14.01:05 Qualifications for license.
- 20:69:14.01:06 Supervision of residential rental agent.
- 20:69:14.01:07 Signing of leases by residential rental agent, if authorized.
- 20:69:14.01:08 Biennial renewal.
- 20:69:14.01:09 Powers of commission in disciplinary matters.
- 20:69:14.01:10 Biennial proof by residential rental agent of continuing education.

20:69:14.01:01. Residential rental agent license. The residential rental agent license is a restricted broker's license pursuant to SDCL 36-21A-47.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-12.1, 36-21A-47.

Law Implemented: SDCL 36-21A-12.1, 36-21A-47.

20:69:14.01:02. Persons to whom license law applicable. A person may not act as a residential rental agent in this state unless the person holds a residential rental agent license pursuant to this chapter or is a real estate broker, salesperson, or property manager.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-12.1.

Law Implemented: SDCL 36-21A-12.1, 36-21A-28, 36-21A-47.

Cross-Reference: Persons and entities exempted from this chapter, SDCL 36-21A-29.

20:69:14.01:03. Application for license. An applicant for a residential rental agent license must file an application on a form provided by the commission.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-12.1.

Law Implemented: SDCL 36-21A-12.1, 36-21A-47.

20:69:14.01:04. Application fee. The application fee for a residential rental agent license is \$60.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-49.

Law Implemented: SDCL 36-21A-12.1.

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20:69:14.01:05. Qualifications for license. A person may obtain a residential rental agent license without education or examination upon approval of the application by the commission and payment of the fee.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-12.1, 36-21A-47.

Law Implemented: SDCL 36-21A-12.1.

Cross-References: Reputation, age, competence, and citizenship required for license -- Prior rejection or revocation of license, SDCL 36-21A-30; Denial of application, SDCL 36-21A-33.

20:69:14.01:06. Supervision of residential rental agent. A person who holds a residential rental agent license must be under the direct supervision of a property manager or a real estate broker licensed by the commission.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-12.1.

Law Implemented: SDCL 36-21A-12.1.

20:69:14.01:07. Signing of leases by residential rental agent, if authorized. A residential rental agent may sign leases if authorized by the broker or property manager with whom the residential rental agent is associated. The lease shall also be endorsed by the responsible broker or property manager of the residential rental agent.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-12.1, 36-21A-47.

Law Implemented: SDCL 36-21A-12.1.

20:69:14.01:08. Biennial renewal. The biennial renewal fee for a residential rental agent license is \$50.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-12.1, 36-21A-61.

Law Implemented: SDCL 36-21A-61.

20:69:14.01:09. Powers of commission in disciplinary matters. The commission shall discipline a residential rental agent in the same manner as it disciplines a licensed real estate broker or salesperson.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-12.1.

Law Implemented: SDCL 36-21A-47.

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20:69:14.01:10. Biennial proof by residential rental agent of continuing education. A residential rental agent shall provide to the commission proof of participation in not less than 12 hours of approved continuing education in the preceding two-year period. The 12 hours of continuing education shall include study in the areas of property management, fair housing, lease of real property, real estate contracts, and real estate license law.

Source: 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-12.1.

Law Implemented: SDCL 36-21A-12.1.

CHAPTER 20:69:15 ERRORS AND OMISSIONS INSURANCE

Section

20:69:15:01	Definition of terms.
20:69:15:02	Insurance required.
20:69:15:03	Minimum standards.
20:69:15:04	Exceptions to coverage.
20:69:15:05	Group policy approval requirements.
20:69:15:06	Optional coverage.
20:69:15:06.01	Standards for optional coverage.
20:69:15:07	Time for filing of certification of optional coverage.
20:69:15:08	Nonpayment of premium.
20:69:15:08.01	Surrender of license for failure to provide proof of insurance.
20:69:15:09	Notification required for cancellation.
20:69:15:10	Proof of insurance required to activate license.
20:69:15:11	Authenticity of coverage.

20:69:15:01. Definition of terms. For the purposes of this chapter, a "qualified insurance carrier" is an insurance carrier which maintains an A.M. Best financial size category of class VI or higher and is and will remain, for the policy term, authorized by the South Dakota Division of Insurance to do business in this state as an errors and omissions insurance carrier of the type contemplated by this chapter.

Source: 20 SDR 18, effective August 16, 1993; 27 SDR 7, effective August 3, 2000.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-120.

20:69:15:02. Insurance required. An applicant for issuance of a license on active status, a licensee renewing a license, or an inactive licensee activating a license must submit proof of insurance coverage through the group plan or through certification of optional coverage.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-120.

20:69:15:03. Minimum standards. The group policy obtained by the commission shall cover all activities contemplated by SDCL Chapter 36-21A and shall provide, at a minimum, the following terms and conditions:

- (1) Not less than \$100,000 single-limit liability coverage for each licensee per occurrence or claim made, not including costs for investigation or defense;
- (2) An annual aggregate limit of not less than \$500,000 per licensee;

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- (3) A deductible amount of not greater than one percent of the total single-limit liability coverage amount for each occurrence and a like deductible amount for defense and investigation;
- (4) Coverage for the vicarious liability for current or previously employed or contracted individuals;
- (5) An extended reporting provision of 90 days and an option to purchase an additional three years extended reporting provision for a premium not to exceed 200 percent of the premium charged for the last year of the terminating coverage;
- (6) Coverage under this section for covered acts in any state, United States territory, or Canada in which a covered individual, domiciled in South Dakota, holds a license; and
- (7) Stacking of benefits.

The minimum coverage applies to each individual licensee.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-121.

20:69:15:04. Exceptions to coverage. Except as provided in this section, coverage may not exclude claims brought against the insured licensee arising out of an act or failure to act by the licensee when performing a professional service for which a license is required. Coverage may limit or exclude claims brought against a licensee which arise as follows:

- (1) Out of claims or suits made or brought by any insured person against any other insured person within the same firm or from compensation disputes between licensees;
- (2) Out of loss assumed under contract or agreement, except for liability the insured would have had in the absence of such agreements;
- (3) From any criminal, dishonest, fraudulent, or willful act or omission. This exclusion does not apply to any insured person who did not personally participate in committing such an act or omission and who, upon having knowledge of the act or omission, reported it;
- (4) From unlawful discrimination committed by or for the insured person;
- (5) From fines or penalties imposed by law;
- (6) From failure to maintain any type or amount of insurance for managed property;
- (7) From bodily injury, personal injury, advertising injury, or property damage;
- (8) From management or sale of property in which the insured or spouse has more than a 10 percent financial or ownership interest. This exclusion does not apply for one year

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from the date a property is acquired under a guaranteed sale listing contract if the property is listed for sale during that entire period;

- (9) From related business activities for which a license is not required under this chapter;
- (10) From any violation of the Securities Act of 1933 as amended through July 1, 1993, or the Securities Exchange Act of 1934 as amended through July 1, 1993, or any state blue sky or securities law or similar state or federal statutes;
- (11) From involvement in any real estate investment contract or syndication as a partner, joint venturer, or underwriter;
- (12) From hazardous materials, nuclear materials, or pollutants;
- (13) From prior wrongful acts; or
- (14) Standard exclusions.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-121.

20:69:15:05. Group policy approval requirements. Any group policy to be issued must conform to the standards and practices of the insurance industry and be approved by the South Dakota Division of Insurance.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-120.

20:69:15:06. Optional coverage. An active licensee who chooses the option of obtaining errors and omissions insurance independently from a provider other than the group carrier under contract with the commission must show evidence of coverage by providing certification of coverage on a form prescribed by the commission. The form must show proof that the licensee has coverage in compliance with the minimum standards established by § 20:69:15:06.01. The form must be signed by an authorized representative of the insurance company, and shall contain a cancellation notification clause as required by § 20:69:15:09.

Source: 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-120, 36-21A-122.

20:69:15:06.01. Standards for optional coverage. A provider issuing insurance coverage pursuant to SDCL 36-21A-122 must be an admitted carrier in South Dakota or in the state in which the licensee being certified resides. All activities contemplated under SDCL chapter 36-21A must be covered.

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The insurance must provide, at a minimum, not less than \$100,000 single limit liability coverage for each licensee for each occurrence or claim made, not including the cost of investigation or defense, and an annual aggregate of \$500,000 for each licensee, not including the cost of investigation and defense. A responsible broker may comply with this requirement by certifying coverages of a minimum of \$500,000/\$1,000,000, if all licensees associated with the broker are covered.

A person who resides in and is licensed in a state that has a mandated program of errors and omissions insurance and who is also licensed in South Dakota meets the requirements for errors and omissions insurance in South Dakota upon providing proof that the person meets the requirements of the person's state of residence.

Source: 21 SDR 125, effective January 23, 1995.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-121.

20:69:15:07. Time for filing of certification of optional coverage. Certification of optional coverage must be filed with the commission by 5:00 p.m. on the date of expiration of coverage. If the certification is not filed on time, the commission shall place the license on inactive status on that date.

Source: 20 SDR 18, effective August 16, 1993; 21 SDR 125, effective January 23, 1995.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-122.

20:69:15:08. Nonpayment of premium. If a certifying insurance company which submitted certification of optional coverage notifies the commission that a licensee has not paid a premium, the commission shall place that licensee's license on inactive status as of the date of termination of coverage.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-122.

20:69:15:08.01. Surrender of license for failure to provide proof of insurance. When a licensee receives notice of being placed on inactive status for failure to provide proof of insurance, the licensee shall immediately surrender the license and the licensee's identification card to the commission.

Source: 21 SDR 125, effective January 23, 1995.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-69.

20:69:15:09. Notification required for cancellation. If insurance under equivalent coverage is to be lapsed or nonrenewed, the providing company must notify the Real Estate Commission of its intent to lapse or nonrenew a minimum of 30 days before the expiration date of the term.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-119.

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Law Implemented: SDCL 36-21A-122.

20:69:15:10. Proof of insurance required to reactivate license. A licensee whose license has been placed on inactive status for failure to provide proof of insurance may not conduct any activities for which a license is required until proof of insurance has been provided to the commission and the license has been activated. The license shall be considered active as of the effective date of the insurance.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-119.

20:69:15:11. Authenticity of coverage. A licensee may not willfully or knowingly cause or allow a certificate of coverage to be filed with the commission which is false, fraudulent, or misleading.

Source: 20 SDR 18, effective August 16, 1993.

General Authority: SDCL 36-21A-119.

Law Implemented: SDCL 36-21A-119.

CHAPTER 20:69:16 DISCLOSURE

Section

20:69:16:01	Disclosure--Generally.
20:69:16:02	Repealed.
20:69:16:03	Appointed agent procedure.
20:69:16:04	Appointed agent disclosure.
20:69:16:05	Appointed agent responsibilities.
20:69:16:06	Designated broker.
20:69:16:07	Licensee's duty to responsible broker or designated broker.
20:69:16:08	Responsible broker or designated broker may appoint broker or broker associate to exclusively represent client.
20:69:16:09	Responsible broker or designated broker appointing team to exclusively represent client—Licensee within team representing both parties to same transaction.
20:69:16:10	Limited agency when appointed agent's client becomes interested in listing procured by responsible broker or designated broker.
Appendix A	Disclosure form, repealed, 32 SDR 53, effective October 11, 2005.

20:69:16:01. Disclosure -- Generally. Disclosures must be made on a form substantially the same as the real estate relationships disclosure form prescribed by the commission. The form shall contain the requirements imposed by SDCL 36-21A-147, the types of agency and brokerage relationships the broker offers, acknowledgment that the consumer has received the real estate consumer guide for the sale and purchase of residential real property, and acknowledgment of any consumer not being represented in the real estate transaction. However, a residential property manager acting as an agent for an owner may include an agency relationship disclosure in an application to lease or other document. The disclosure must be in italics or bold print and must include one of the following statements: "I, (name), a real estate licensee, am representing the owner in this transaction. All agents of (name of company) represent the owner in this and any other transaction."

A real estate licensee acting as an auctioneer may comply with the disclosure requirements by including a statement on any printed advertisement and making an announcement at the beginning of the auction. The disclosure must state that the licensees are representing the seller or sellers.

Source: 16 SDR 36, effective August 29, 1989; transferred from § 20:56:04:12.02, 20 SDR 18, effective August 16, 1993; transferred from § 20:69:03:18, 21 SDR 125, effective January 23, 1995; 23 SDR 110, effective January 9, 1997; 25 SDR 90, effective December 28, 1998; 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-147.

Law Implemented: SDCL 36-21A-147.

20:69:16:02. Open houses. Repealed.

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Source: 16 SDR 36, effective August 29, 1989; transferred from § 20:56:04:12.02, 20 SDR 18, effective August 16, 1993; transferred from § 20:69:03:18, 21 SDR 125, effective January 23, 1995; repealed, 25 SDR 90, effective December 28, 1998.

20:69:16:03. Appointed agent procedure. Prior to entering into a listing or agency agreement, a real estate licensee shall notify a client in writing of the real estate brokerage's appointed agent policy and those affiliated licensees within the real estate brokerage that will act as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage.

A brokerage may not, without the written consent of the client, appoint an affiliated licensee to act as an appointed agent in any transaction involving a written exclusive single agency or limited agency agreement that was in effect prior to the broker implementing the appointed agent relationship.

If the client of an appointed agent demonstrates interest in a property on which the responsible broker has an existing exclusive single agent or limited agent brokerage agreement, the broker may not permit the use of the appointed agent without first obtaining the written consent of that seller or landlord to the appointed agent relationship. If the written consent of the client to allow the appointed agent relationship is not given or cannot be obtained, the broker shall refer the client of the appointed agent to another broker for representation for the purpose of considering such property.

Source: 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-141.1, 36-21A-147.

Law Implemented: SDCL 36-21A-141.1, 36-21A-147.

20:69:16:04. Appointed agent disclosure. The appointed agent disclosure shall include, at a minimum, the following provisions:

- (1) The name of any appointed agent;
- (2) A statement that the appointed agent will represent the client as the client's agent and will owe the client duties as set forth in SDCL 36-21A-132 and 36-21A-133;
- (3) A statement that the brokerage may represent both the seller and the buyer in connection with the sale or purchase of real estate;
- (4) A statement that another affiliated licensee may be appointed during the term of the agency agreement if the appointed agent is not able to fulfill the terms of the agency agreement or if the responsible broker and the client agree. An appointment of another affiliated licensee or an additional affiliated licensee does not relieve the first appointed agent of any duties owed to the client; and
- (5) A provision for the client to consent or not consent in writing to the agreement.

Source: 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-141.1, 36-21A-147.

Law Implemented: SDCL 36-21A-141.1, 36-21A-147.

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20:69:16:05. Appointed agent responsibilities. An appointed agent may disclose to the brokerage's responsible broker or designated broker confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a possible transaction, or to comply with the broker's supervisory duties. Confidential information shall be treated as such by the responsible broker or designated broker and may not be disclosed unless otherwise required by statute or rule or requested or permitted in writing by the client who originally disclosed the confidential information.

If a responsible broker appoints an agent and the appointed agent also acts in a supervisory capacity under the responsible broker, such as a branch manager or sales manager, the appointed agent may be treated in the same manner as the responsible broker for purposes of determining limited agency only if the responsible broker authorizes and provides for such supervisory positions in the written policy.

Source: 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-141.1.

Law Implemented: SDCL 36-21A-141.1.

20:69:16:06. Designated broker. A responsible broker may authorize and appoint a designated broker in a capacity to supervise and assist a licensee appointed to exclusively represent a seller or landlord in a transaction. A responsible broker may authorize and appoint a designated broker in a capacity to supervise and assist a licensee appointed to exclusively represent a buyer or tenant in a transaction. A designated broker authorized and appointed to supervise and assist a licensee appointed to represent a seller or landlord, or buyer or tenant, exclusively, has the same duties, obligations, and responsibilities as the responsible broker. The use of an authorized appointed agent does not relieve the responsible broker of duties, obligations, or responsibilities required by any statute or rule.

Source: 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-141.1.

Law Implemented: SDCL 36-21A-141.1.

20:69:16:07. Licensee's duty to responsible broker or designated broker. A licensee shall keep the brokerage's responsible broker or designated broker fully informed of any activity conducted on behalf of the brokerage and shall notify the responsible broker or designated broker of any other activity that might impact the responsibility of the responsible broker or designated broker.

Source: 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-141.1.

Law Implemented: SDCL 36-21A-141.1.

20:69:16:08. Responsible broker or designated broker may appoint broker or broker associate to exclusively represent client. A responsible broker or designated broker may appoint a broker or broker associate having an ownership interest in the same firm as the responsible broker to act as an appointed agent to exclusively represent a seller or landlord or a buyer or tenant.

Source: 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-141.1.

Law Implemented: SDCL 36-21A-141.1.

20:69:16:09. Responsible broker or designated broker appointing team to exclusively represent client -- Licensee within team representing both parties to same transaction. If a responsible broker or designated broker appoints a licensee who performs real estate transactions within a team of licensees associated with the same responsible broker, the responsible broker or designated broker must appoint every licensee within the team to exclusively represent the same client. If any licensee within the team represents both parties to the same transaction, a limited agency relationship exists.

Source: 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-141.1.

Law Implemented: SDCL 36-21A-141.1.

20:69:16:10. Limited agency when appointed agent's client becomes interested in listing procured by responsible broker or designated broker. If a buyer or tenant represented by an agent of the responsible broker becomes interested in a property listing that was procured by the responsible broker or designated broker, the relationship between the appointed agent and the buyer or tenant is deemed that of disclosed limited agency.

Source: 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-141.1.

Law Implemented: SDCL 36-21A-141.1.

***The Real Estate Relationship Disclosure Form prescribed by the
South Dakota Real Estate Commission may be downloaded from
the Commission's website –***

www.state.sd.us/sdrec

**CHAPTER 20:69:17
AGREEMENTS**

Section

20:69:17:01 Agreements for brokerage services.
Appendix A Agreements, repealed, 32 SDR 53, effective October 11, 2005.

20:69:17:01. Agreements for brokerage services. Agreements to perform real estate brokerage services must be on forms substantially the same as the forms prescribed by the commission. The forms must comply with the requirements imposed by SDCL 36-21A-130 and this section.

A real estate purchase agreement prepared by a licensee must contain the names of the buyer and seller; an acknowledgment that earnest money was received; the purchase price; any disclosure acknowledgments; any contingencies regarding financing, sale of purchaser's property, and inspections; and provisions for a survey, prorations, warranties, merchantable title, closing, possession, handling of earnest money, mediation, length of time for seller's acceptance, and seller's decision to accept, not accept, or counter buyer's offer.

A real estate auction purchase agreement prepared by a licensee must contain the names of the buyer and seller; the purchase price; any disclosure acknowledgments; and provisions for handling earnest money, prorations, merchantable title, closing, and possession.

A real estate commercial or agricultural purchase agreement prepared by a licensee must contain the names of the buyer and seller; an acknowledgment that earnest money was received; the purchase price; any disclosure acknowledgments; any contingencies regarding financing and inspections; and provisions for prorations, merchantable title, closing, possession, handling of earnest money, length of time for seller's acceptance, and seller's decision to accept, not accept, or counter buyer's offer.

Source: 25 SDR 90, effective December 28, 1998; 26 SDR 41, effective September 29, 1999; 32 SDR 53, effective October 11, 2005.

General Authority: SDCL 36-21A-130.

Law Implemented: SDCL 36-21A-130.

***The Agreements prescribed by the South Dakota Real Estate
Commission may be downloaded from the Commission's website –***

www.state.sd.us/sdrec